

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO.: 20-cv-4728-MCA-MAH

4
5 EMERSON REDEVELOPERS URBAN
6 RENEWAL, LLC,

7 Plaintiff,
8
9 vs.

10
11 THE BOROUGH OF EMERSON, NEW
12 JERSEY and DANIELLE DIPAOLA,

13 Defendants.

14 -----

15
16 DEPOSITION OF YAAKOVI "JACK" KLUGMANN
17 TUESDAY, APRIL 25, 2023

18
19 Deposition of YAAKOVI KLUGMANN in the
20 above-mentioned matter before Jomanna DeRosa, a
21 Certified Court Reporter (License No. 30XI00188500),
22 and Notary Public of the State of New Jersey, taken
23 at 250 Moonachie Road, Moonachie, New Jersey on
24 Tuesday, April 25, 2023, commencing at 10:06 a.m.
25 Job No. CS5877544

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1 A P P E A R A N C E S

2

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25

Page 3

1 A P P E A R A N C E S (CONT'D)

2

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1 I N D E X

2
3 WITNESS EXAMINATION BY PAGE
4 Mr. Klugmann Mr. Seaman 9
5
6
7

8 E X H I B I T S
9

10 NUMBER DESCRIPTION PAGE
11 FD-1 First Amended Complaint 31
12

13 (All exhibits are attached hereto.)
14

15
16 REQUESTS
17

18 PAGE LINE
19 47 5
20 66 4
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25

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1 YAAKOVI KLUGMANN, residing at 32 Cross
2 Street, Suite 301, Lakewood, New Jersey 08701, having
3 first been duly affirmed by the Notary, then
4 testified as follows:

5

6 MR. FIORENZO: Before we begin, I just
7 want to place something on the record. Who is going
8 to be examining Mr. Klugmann today?

9 MR. SEAMAN: I'm going to be taking the
10 lead.

11 MR. FIORENZO: Okay. Because you both
12 represent the same parties. We're not going to let
13 Mr. Klugmann be examined by two attorneys
14 representing the same party. There should be one
15 person examining him.

16 MR. SEAMAN: Well, we don't represent
17 the same parties. I only represent Mayor DiPaola.

18 MR. FIORENZO: As does Mr. Botta.

19 MR. SEAMAN: With regard to any
20 uninsured claims.

21 MR. FIORENZO: You both represent Mayor
22 DiPaola.

23 MR. SEAMAN: On different issues.

24 MR. FIORENZO: Okay. My position is
25 that two attorneys representing the same client do

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1 not have a right to conduct an examination of a
2 deponent.

3 MR. SEAMAN: Do you have a rule to
4 support that position?

5 MR. FIORENZO: I'll get you some
6 authority for that. But at the moment, I'm not going
7 to cite anything off the top of my head. But you
8 don't have a right to question the witness twice.
9 You can't have two attorneys examine the same witness
10 at a deposition if they're representing the same
11 party.

12 MR. SEAMAN: Well --

13 MR. FIORENZO: That's duplicative.

14 MR. SEAMAN: Well, there will not be a
15 duplicative question. I can guarantee you that.
16 Mr. Botta and I will certainly work to not be
17 duplicative of the questioning.

18 MR. FIORENZO: Just so we're clear on
19 the record. My position is that only one counsel
20 representing the DiPaola party -- you represent Mayor
21 DiPaola.

22 MR. SEAMAN: I do.

23 MR. FIORENZO: Mr. Botta does as well.
24 Only one attorney representing Mayor DiPaola should
25 have the right to examine the witness. Whoever that

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1 is, I don't care. But we're not going to have you
2 examine on behalf of Mayor DiPaola and Mr. Botta do
3 the same thing. That's not appropriate.

4 MR. SEAMAN: Well, Mr. Botta also
5 represents The Borough as an entity.

6 MR. FIORENZO: Well, that's true.
7 That's true. But, again, you're both representing
8 Mayor DiPaola. So I'm not going to let two people
9 examine him. So do you want Mr. Botta then, since he
10 represents both parties, you only represent one? Let
11 him do the examination?

12 MR. BOTTA: Well, you put it on the
13 record Mr. Fiorenzo, so very good. Thank you.

14 MR. SEAMAN: Okay.

15 MR. FIORENZO: Okay. Just so we're
16 clear, I'm not going to consent to a second attorney,
17 no offense to Mr. Botta.

18 MR. BOTTA: Well, I would disagree with
19 that.

20 MR. FIORENZO: Well, no, I mean, it's
21 nothing personal. The position is two attorneys
22 representing the same party don't have the right to
23 examine the witness. That's my position. So, with
24 that said on the record --

25 MR. BOTTA: So are you going to object

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1 if I ask questions and direct him not to answer?

2 MR. FIORENZO: Yes, I'm going to direct
3 him not to answer questions from you. If you do that
4 at the conclusion of his examination, yes.

5 MR. BOTTA: Well, then I guess we're
6 going to have to get Judge Hammer on the phone.

7 MR. FIORENZO: We may have to do that.
8 We may have to do that because I don't think it's
9 appropriate having two attorneys examine on behalf of
10 the same client.

11 MR. BOTTA: All right.

12 MR. FIORENZO: So I don't know if you
13 want to do that now or you want to do it later. It's
14 up to you guys. I just want to, you know, state my
15 position clearly up front so you can handle it any
16 way you want. You want to start your examination
17 now, get the Judge on the phone, whatever works.

18 MR. SEAMAN: All right. Well, let's
19 take a break. Chris and I will discuss it and we'll
20 get back and tell you which way we're going to go.

21 MR. FIORENZO: That's fine.

22
23 (Whereupon, a brief recess was taken off
24 the record.)
25

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1 MR. FIORENZO: Just do me a favor when
2 we start the deposition, just note the timing because
3 there's a seven-hour limit.

4 MR. SEAMAN: Mr. Botta and I have
5 discussed this. While we appreciate you putting your
6 position on the record, we don't agree. It's your
7 position. I've asked you for some authority, other
8 than you giving your position. You haven't given
9 that to me yet to even evaluate what we think or to
10 determine whether we -- there's authority for your
11 position. We're going to proceed right now. But
12 Mr. Botta may ask questions later and we'll deal with
13 that with Judge Hammer at that time. Okay?

14 MR. FIORENZO: Fair enough. Let's do
15 it.

16

17 DIRECT EXAMINATION

18 BY MR. SEAMAN:

19 Q. Good morning, Mr. Klugmann.

20 A. How are you?

21 Q. My name is Leonard Seaman and my firm
22 represents Danielle DiPaola in this lawsuit that is
23 pending by Accurate Builders against Mayor DiPaola
24 and The Borough of Emerson -- not Accurate Builders
25 -- Emerson Redevelopers. Correct? You've been

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1 produced today as a witness for deposition in this
2 case. I know you were deposed previously last summer
3 in another suit related to the Emerson development.
4 Do you need me to go over any of the instructions
5 before we begin?

6 MR. FIORENZO: If you could, for the
7 benefit of him. I probably think it's a good idea.

8 THE WITNESS: It's a good idea.

9
10 BY MR. SEAMAN:

11 Q. Okay. So everything being said in the
12 room today is being taken down by this lovely woman
13 here, the court reporter. She takes down all the
14 words that are said in the deposition. However, she
15 can't take down something like you nodding your head,
16 shrugging your shoulders, when people say "uh-huh"
17 for "yes" and "uh-uh" for "no"; it ends up looking
18 the same on paper. People get confused. It doesn't
19 make a clean record. So please try to answer my
20 questions verbally with words, as appropriate, as
21 they come about. It's also very difficult for her to
22 take down two people speaking at the same time.
23 Please wait for me to finish my question before you
24 provide an answer. I will of course try and show you
25 the same courtesy in terms of making sure you

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1 finished your answer before I ask another question.
2 If Mr. Fiorenzo should raise any sort of objection,
3 please let him place that objection on the record.
4 We may have some discussion, we may not. We may do
5 whatever. You'll probably be given an instruction
6 once that's done and you can follow his instruction
7 at that point.

8 Do you understand that?

9 A. Yes.

10 Q. I also ask you to listen to my complete
11 question because lawyers have a habit of starting a
12 question, the witness anticipates what the question
13 is, the witness starts to answer the question they
14 think the lawyer is going to ask. Then the lawyer
15 changes the question somehow at the last minute and
16 suddenly you're not answering the question that's
17 trying to be asked of you. That just creates a
18 situation where you haven't answered the question
19 being asked and we have to go back and start all over
20 again to make the record clean. So please wait for
21 me to finish my question before you provide any sort
22 of answer. I also want to make sure that you've
23 heard my complete question so we're sure you
24 understand the question. If I ask you a question
25 that's in any way confusing, I used a word you didn't

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1 understand, I mumbled, I went too fast, anything like
2 that, that is in any way confusing, you didn't hear
3 it, if you don't understand the question, stop and
4 let me know. Tell me you're confused. Explain to me
5 what the problem is. I will repeat, rephrase or
6 change my question in whatever way so we're sure that
7 you're answering the question that I'm asking.

8 Do you understand that?

9 A. Yes.

10 Q. Okay. The converse to that rule is that
11 if you provide an answer to a question today, if this
12 deposition is used later in terms of the court
13 proceedings, Judge Cox Arleo, potentially the jury in
14 this matter when it goes to trial in Newark will
15 assume that you're answering the question as it's
16 being asked.

17 Do you understand that?

18 A. Yes.

19 Q. Okay. This is not a memory contest.
20 Don't feel compelled to answer questions just because
21 I'm asking them. If you don't know or you don't
22 recall, that's perfectly acceptable. Please tell me
23 that and we'll move on. It's also not an endurance
24 contest. As your attorney mentioned, there's a
25 seven-hour limit under the -- Rules of Civil

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1 Procedure and we already know from people here, we're
2 probably not going to go that long today. That being
3 said, if you need to take a break at any time, please
4 let me know. I'll be happy to accommodate you. The
5 only condition I put on that is if there's a question
6 pending, I'm going to ask for your answer before we
7 take our break.

8 Do you understand that?

9 A. Yes.

10 Q. Lawyers often give witnesses instruction
11 at a deposition; don't guess, but you can estimate.
12 I find that to be a very confusing instruction and it
13 makes little sense, to me at least. So I'm going to
14 tell you what I mean by it. A guess is an
15 off-the-wall guess. If I were to ask you what the
16 winning numbers in next Saturday's Mega Millions
17 lottery were, you could give me an answer. It would
18 be a guess. It would do us no good; maybe, maybe
19 not. But it would be an off-the-wall guess. An
20 estimate is something that, while you cannot be
21 absolutely precise, and this often comes up with
22 dates, times, in certain cases distances, things like
23 that; you can't be absolutely precise to your answer,
24 but you can give a reasonable estimate and it will be
25 one that you would feel comfortable sitting in the

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1 federal courthouse in Newark and telling Judge Cox
2 Arleo and the jury in this case that it was the
3 truth, albeit an estimate.

4 Do you understand the difference between
5 those two?

6 A. Yes.

7 Q. Okay. So if you're presented with a
8 question that you can't be absolutely precise and you
9 can't give an absolute precise answer, but you can
10 give a reasonable estimate within those parameters,
11 please give a reasonable estimate and let me know
12 you're estimating. If it's anything less than that
13 in terms of your confidence in giving the answer,
14 it's just a guess and you can tell me that you would
15 be guessing and we'll leave it at that.

16 Do you understand that?

17 A. Yes.

18 Q. Did you have an opportunity to meet with
19 your counsel prior to the deposition today?

20 A. Yes.

21 Q. Do you need to speak with Mr. Fiorenzo
22 or Mr. Klein any further before we begin?

23 A. No, we're ready to go.

24 Q. Okay. Other than your counsel, did you
25 discuss your deposition today with any other person?

Page 15

1 A. No.

2 Q. Did you review any documents in
3 preparation for your deposition today?

4 A. Yes.

5 Q. What documents did you review in
6 preparation for your deposition today?

7 A. Just a summary of notes that I have that
8 my attorney gave to me.

9 Q. Are those notes that you have taken on
10 this case?

11 A. No.

12 Q. Are those notes that were prepared by
13 your counsel?

14 A. Yes.

15 Q. And when did you review those notes?

16 A. About ten minutes ago.

17 MR. SEAMAN: Off the record.

18

19 (Whereupon, a brief discussion took
20 place off the record.)

21

22 BY MR. SEAMAN:

23 Q. The plaintiff in this case is Emerson
24 Developers Urban Renewal. Correct?

25 A. Yes.

Page 16

1 Q. How are you affiliated with Emerson
2 Redevelopers Urban Renewal?

3 A. I'm the managing member.

4 Q. And is Emerson Redevelopers Urban
5 Renewal a single purpose entity meant to develop the
6 property in Emerson that's the subject of this
7 litigation?

8 A. Yeah.

9 Q. Okay. And what -- you're also
10 affiliated with a company called Accurate Builders.
11 Is that correct?

12 A. Yes.

13 Q. And can you describe the business of
14 Accurate Builders?

15 A. Accurate Builders is a
16 development/building company GC.

17 Q. And how long has Accurate Builders been
18 active as a developer/building company GC?

19 A. Over ten years.

20 Q. At the present time, is all of the work
21 of Accurate Builders related to development,
22 building, and general contracting services for single
23 purpose entities similar to Emerson Redevelopers
24 Urban Renewal?

25 MR. FIORENZO: Object to the form of the

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1 question. You may answer it.

2 THE WITNESS: I don't understand it.

3

4 BY MR. SEAMAN:

5 Q. Let me ask it this way: Accurate
6 Builders maintains a website?

7 A. Yes.

8 Q. Okay. And what's the name of that
9 website, if you know? You seem to be struggling with
10 it.

11 A. Yeah. Honestly, I don't know.

12 MR. FIORENZO: The name of the website?

13 MR. SEAMAN: The URL for the website.

14 THE WITNESS: AccurateofNJ.com, maybe.
15 I don't know. I don't really know the website.

16

17 BY MR. SEAMAN:

18 Q. You don't know? Okay. When was the
19 last time you reviewed the website for Accurate
20 Builders?

21 A. I don't know that I ever have.

22 Q. Are you aware that the Accurate Builders
23 website contains a web page that talks about a
24 portfolio of properties?

25 A. Yes.

Page 18

1 Q. Okay. And that portfolio of properties
2 relates to various types of construction that
3 Accurate Builders has engaged in over it's existence.
4 Is that fair to say?

5 A. Yes.

6 Q. And that portfolio of properties
7 includes some single family homes. Correct?

8 A. Yes.

9 Q. It includes some commercial development
10 buildings?

11 A. Yes.

12 Q. Okay. And it involves some multi-family
13 mixed use properties?

14 A. Yes.

15 Q. Are there any other types of properties
16 that Accurate Builders was involved in the
17 construction and development of -- or has been
18 involved in since this lawsuit began?

19 A. We do warehousing and office space and
20 just residential apartment buildings.

21 Q. And within those different categories of
22 properties, where does the Emerson project fall?
23 What category would you put that in?

24 MR. FIORENZO: Object to the form. You
25 may answer.

Page 19

1 THE WITNESS: Mixed use.

2

3 BY MR. SEAMAN:

4 Q. And the Emerson property, when it is
5 completed, it is contemplated to provide commercial
6 rental space?

7 A. There's about 14,000 square feet of
8 retail space.

9 Q. And also residential apartments?

10 A. Yes.

11 Q. How many residential apartments are
12 contemplated for the Emerson project?

13 A. So there's two properties. One is
14 147 units and one is 7 units.

15 Q. And where are the 147 units located?

16 A. On Kinderkamack Road in Emerson.

17 Q. And where are the seven units to be
18 located?

19 A. Also -- 129 Kinderkamack Road.

20 Q. And a portion of those residential units
21 are designated as low to moderate income housing?

22 A. Yes.

23 Q. And how many of those units are low
24 income housing?

25 A. There's 22 on-site affordable units and

Page 20

1 there's 7 off-site affordable units.

2 Q. And of the affordable units, on-site or
3 off-site, is there a distinction between them being
4 low income housing or moderate income housing?

5 A. I don't know what it is.

6 Q. I want to understand your answer. Are
7 you saying you don't know what low or moderate income
8 housing is? Let me withdraw the question. I need to
9 ask a better question.

10 Do you have an understanding of what is
11 considered low income housing in New Jersey?

12 MR. FIORENZO: Under the COAH
13 regulations, you're referring to?

14 MR. SEAMAN: Yes.

15 MR. FIORENZO: Okay.

16 THE WITNESS: Yes.

17

18 BY MR. SEAMAN:

19 Q. What is your understanding of low income
20 housing under COAH?

21 A. Depends what people are -- depends on
22 how much the income is for the county versus what
23 they're making and stuff like that.

24 Q. And what is your understanding of what
25 moderate income housing is in Bergen County?

Page 21

1 A. I don't know the numbers.

2 Q. Are you aware of how many units in the
3 Emerson project are designated as low income versus
4 moderate income in Bergen County?

5 A. No.

6 Q. Are you aware if any of the units in the
7 Emerson project are designated as low income?

8 A. I don't know this offhand.

9 Q. From the website, I'll just indicate to
10 you I found it as www.accurate-re.com. Does that
11 sound about right?

12 A. Yes.

13 Q. Google is great. The portfolio for
14 mixed use properties on that website, you list a
15 number of different properties and I will ask you
16 about some of them. Citizen at Linden, are you
17 familiar with that property?

18 A. Yes.

19 Q. Is it in construction or complete?

20 A. It's 100 percent complete.

21 Q. And is it leased?

22 A. Yes.

23 Q. How many units of residential housing
24 are in that development?

25 A. 234.

Page 22

1 Q. And are any of those 234 units
2 designated as low or moderate income housing?

3 A. No.

4 Q. City Square in Newark is that -- are you
5 familiar with that project?

6 A. Yes.

7 Q. And is that project complete or under
8 construction?

9 A. No, we're starting the construction.

10 Q. Crossings By Citizen in Raritan, in
11 Raritan, New Jersey?

12 A. Yes.

13 Q. Are you familiar with that project?

14 A. I am.

15 Q. Okay. Is it complete?

16 A. It is.

17 Q. And are units being offered for rental
18 in that project?

19 A. As opposed to?

20 Q. I'm sorry. I'm just trying to reference
21 being complete and being rented?

22 A. Oh, yes. Yeah.

23 Q. Okay. How many units are in Crossings
24 By Citizen?

25 A. 276.

Page 23

1 Q. Are any of those units low or moderate
2 income housing?

3 A. There are 20 affordable units. It's a
4 pretty nice website. I should go on it every so
5 often.

6 Q. Just for the record, you made a comment
7 to Mr. Fiorenzo. I'm assuming he has your website
8 open and you looked. I'm asking you for the
9 information that you know. Obviously, if you would
10 prefer that website, I just want to know. I'm not --

11 MR. FIORENZO: Yeah, I haven't showed it
12 to him.

13 MR. SEAMAN: No, I understand. Joe, I
14 understand. And it's not -- I'm just making sure
15 that the record is clear with what the witness knows.
16 That's all.

17 THE WITNESS: I don't have an issue with
18 your question.

19 MR. SEAMAN: No, I know. I'm protecting
20 the record, from my standpoint. I know there was
21 nothing that was improper there.

22 Off the record.

23
24 (Whereupon, a discussion takes place off
25 the record.)

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1

2 BY MR. SEAMAN:

3 Q. Mr. Klugmann, of the -- are you aware of
4 whether the 20 affordable units in Crossings By
5 Citizen are leased at this time?

6 A. I don't know the state of all of them.

7 Q. Are you aware of the racial background
8 of any of the tenants in the affordable units at
9 Crossings By Citizen at Raritan?

10 A. No.

11 Q. Are you aware of the racial background
12 of any of the tenants at Citizen by Raritan?

13 A. No, it's not important to me.

14 Q. And Citizen Bayonne, is that project
15 completed?

16 A. Parts of it.

17 Q. Are parts of it being leased to tenants?

18 A. Yes.

19 Q. And how many units is that?

20 A. It's a total of 651 units.

21 Q. And how many, approximately, are
22 available to lease?

23 A. I don't know.

24 Q. Of the 651 total units, are there any
25 affordable housing units?

Page 25

1 A. No.

2 Q. Citizens in Little Falls, is that
3 project complete and leasing?

4 A. It is 95 percent complete. It is being
5 leased.

6 Q. Have any of the tenants taken occupancy?

7 A. No.

8 Q. Are any of the units in Citizen Little
9 Falls affordable housing units?

10 A. Yes.

11 Q. And how many units total at Citizen
12 Little Falls?

13 A. 45.

14 Q. And how many are affordable?

15 A. Oh, it's 185 units and 45 of them are
16 affordable. I thought that was your question.

17 Q. Okay. Thank you for clarifying. Are
18 you aware of the racial background of any of the 45
19 -- the tenants of any of the 45 affordable units?

20 MR. FIORENZO: Objection. Form. He's
21 already said it hasn't been rented yet, so how would
22 he know?

23
24 BY MR. SEAMAN:

25 Q. Are you aware -- I want to clarify. I

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1 may have misunderstood.

2 Are leases signed with any tenants or
3 has it not been rented at all?

4 A. I'm really not involved in this on a
5 day-to-day basis, so I don't know.

6 Q. You don't know. Okay. All right. As
7 you sit here today, you don't know if anyone is
8 occupying a unit at Citizen Little Falls?

9 A. No, I told you, no one is in there.

10 Q. Okay. I apologize, then I
11 misunderstood.

12 A. No problem.

13 Q. Citizen Bound Brook, is that completed
14 or under construction?

15 A. Yes. It's also 95 percent complete.

16 Q. Are any of the units in Citizen Bound
17 Brook leased to tenants who are occupying units?

18 A. Yes.

19 Q. How many units total is Citizen Bound
20 Brook?

21 A. 105.

22 Q. And does that include any affordable
23 housing units?

24 A. Does not.

25 Q. There's a project identified in your

Page 27

1 website simply as Basking Ridge?

2 A. Yes.

3 Q. Does that have a name that it goes by as
4 well?

5 A. Nope, not yet.

6 Q. Okay. Is it completed or under
7 construction?

8 A. No, it's under construction.

9 Q. There's also a project identified as
10 Parsippany. Is that complete or under construction?

11 A. Under construction.

12 Q. There's a project identified as Citizen
13 Clifton on your website. Is that complete or under
14 construction?

15 A. Under construction.

16 Q. There's a project identified in your
17 website as Montclair. Is that complete or under
18 construction?

19 A. Under construction.

20 Q. There's a project identified on your
21 website as New Brunswick. Is that complete or under
22 construction?

23 A. They're doing demo.

24 Q. So it's obviously not even started
25 construction of the actual unit yet?

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1 A. Correct.

2 Q. Okay. A project on your website
3 identified as Cedar Grove. Is that complete or under
4 construction?

5 A. It's under construction.

6 Q. There's a project on your website
7 identified as Citizen Guttenberg. Is that complete
8 or under construction?

9 A. It just got approvals.

10 Q. Okay. There's a project on your website
11 referred to as Perth Amboy. Is that complete or
12 under construction?

13 A. Neither.

14 Q. Okay. What does that mean, just so I
15 can clarify?

16 A. It means we're going through the
17 approval process.

18 Q. Other than the projects that we've just
19 discussed, are there any other projects that Accurate
20 Builders has been involved in the construction of
21 that are completed and renting units to tenants in
22 the State of New Jersey?

23 A. Sure. My website has a lot of it.

24 Q. Okay. Maybe I can clarify it. Are
25 there any others that are identified as multi-family

Page 29

1 units as opposed to a single family or townhome
2 units?

3 MR. FIORENZO: Is the question whether
4 there are any other multi-family units that Accurate
5 has been involved in construction of, other than what
6 you've discussed with him? Is that --

7 MR. SEAMAN: Yes.

8 THE WITNESS: That we've built?

9 MR. SEAMAN: Yes?

10 THE WITNESS: Yes.

11

12 BY MR. SEAMAN:

13 Q. Are there any that you're still involved
14 in, in terms of the ownership and management of?

15 A. I'm a little confused.

16 Q. Okay. What's confusing you about my
17 question?

18 A. I don't understand what you're asking
19 me. Are there things that are not on the website
20 that I'm involved in? Are there things that I'm an
21 investor in? Are there -- like, I don't understand
22 your question.

23 Q. Okay. Are there -- let me ask it this
24 way then: Are there other projects that you have an
25 interest in involving mixed use -- no, let me ask a

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1 better question.

2 MR. FIORENZO: Is this Accurate when you
3 say "you" now? Object to the form. Are you asking
4 about Accurate's involvement in these projects?

5 MR. SEAMAN: Okay. Fair enough, Joe.
6 Fair enough, Joe. Yeah. Yeah. I'm using "you" in
7 the vocative sense, not the nominative sense in terms
8 of "you" as Accurate Builders. And I apologize if
9 that was in any way confusing.

10

11 BY MR. SEAMAN:

12 Q. So are there any other projects that
13 Accurate Builders has been involved in the
14 development of that include affordable housing rental
15 units, besides the ones we've talked about?

16 A. I don't recall right now.

17 Q. Have you ever reviewed the First Amended
18 Complaint that was filed by your attorneys in this
19 action?

20 A. Have I ever reviewed -- I didn't hear
21 you.

22 Q. Have you ever reviewed -- I apologize.
23 I'll re-ask it.

24 Have you ever reviewed the First Amended
25 Complaint that was filed by your attorneys in the

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1 lawsuit in this action in federal court in Newark?

2 A. Yes, I have.

3 Q. When was the last time you reviewed it?

4 A. I don't remember.

5 Q. Do you know if you reviewed it before or
6 after it was filed?

7 A. I don't remember either.

8

9 (Whereupon, Exhibit FD-1 was marked for
10 identification.)

11

12 BY MR. SEAMAN:

13 Q. Mr. Klugmann, I've given you a document
14 that I've marked as FD-1 for identification. It's
15 the filed First Amended Complaint in the federal
16 court action. Please take as much time as you need
17 to review it and let me know when you're ready to
18 answer some questions.

19 A. Let's go through it.

20 MR. FIORENZO: Take a minute just to
21 skim through it.

22 THE WITNESS: You sure?

23 MR. FIORENZO: Yeah.

24 THE WITNESS: It's a lot of papers.

25 MR. FIORENZO: It's all right.

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1 Okay, he's reviewed it.

2

3 BY MR. SEAMAN:

4 Q. Mr. Klugmann, before I start asking you
5 about the complaint, obviously, Danielle DiPaola is
6 one of the defendants in this case. When did you
7 first meet Mayor DiPaola?

8 A. The end of 2018.

9 Q. And what was the -- what were the
10 circumstances of you meeting her at the end of 2018?

11 A. I was coming in to be the redeveloper.

12 Q. So where did you meet Mayor DiPaola?

13 A. Emerson town hall.

14 Q. And given the time frame, she was not
15 yet mayor. Is that correct?

16 MR. FIORENZO: You mean when he first
17 met her, you're talking about?

18 MR. SEAMAN: Yes.

19 THE WITNESS: She was mayor-elect.

20

21 BY MR. SEAMAN:

22 Q. When you say you were coming in to be
23 the redeveloper, I imagine that you're speaking about
24 the entity Emerson Developers Urban Renewal LLC.
25 Is that fair to say?

Page 33

1 A. Yes.

2 Q. Okay. And where did you -- was this a
3 public meeting or something of that nature that you
4 met Mayor DiPaola for the first time?

5 A. Yeah.

6 Q. Do you know what public body was
7 meeting?

8 A. I don't remember which one it was.

9 Q. Did you have any one-on-one interaction
10 with Mayor DiPaola at that time?

11 A. Not that I recall.

12 Q. You indicated that when you met Mayor
13 DiPaola she was mayor-elect, so the election had
14 already taken place. Is that fair to say?

15 A. Yes.

16 Q. Did you follow the municipal election in
17 Emerson in any way?

18 A. Not even a little bit.

19 Q. Did you receive any flyers?

20 A. No.

21 Q. Didn't see any campaign information
22 anywhere?

23 A. That I have no idea if I saw.

24 Q. You don't have any recollection of
25 seeing any campaign information. Is that fair to

Page 34

1 say?

2 A. That's fair to say.

3 Q. Did you speak to any of the citizens of
4 Emerson about that election and what they were --
5 what the issues were?

6 A. No.

7 Q. Do you recall if there were any votes
8 taken after the public meeting when you first met
9 Mayor DiPaola?

10 A. I don't recall.

11 Q. Do you recall Mayor DiPaola making any
12 statements from the dais during that meeting?

13 A. I don't remember. I don't recall.

14 Q. Have you, at any time, received any
15 e-mail communications from Mayor DiPaola?

16 A. I don't recall.

17 Q. Have you received any text
18 communications from Mayor DiPaola?

19 A. I want to say yes, but it's been so long
20 that I don't remember. So I don't remember.

21 Q. Any of those text communications from
22 Mayor DiPaola, did she ever convey anything that you
23 took to be inappropriate comments of a -- about
24 anyone's racial background?

25 MR. FIORENZO: Objection. Form. Lack

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1 of foundation. He said "I'd like to think I did",
2 but he did not say he did receive a text message.
3 There's no foundation that there was such a text
4 message. You can answer it subject to that
5 objection, if you're able to.

6 THE WITNESS: Can you repeat the
7 question, again?

8 MR. SEAMAN: Can you read the question
9 back?

10
11 (Whereupon, the requested portion of the
12 record was read by the reporter.)
13

14 THE WITNESS: I don't remember the text
15 message from DiPaola, so I can't answer the question.
16 I don't remember if I got a text message, if I texted
17 her, so I can't answer the question if I have text
18 messages from her that she said something about
19 racial background.

20
21 BY MR. SEAMAN:

22 Q. Have you ever heard Mayor DiPaola make a
23 comment that you interpreted as inappropriate in
24 terms of someone's racial background?

25 A. Can I talk to counsel?

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1 MR. FIORENZO: No, no, hold on. Object
2 to the form. Are you asking about verbal statements
3 now?

4 MR. SEAMAN: Yes.

5 MR. FIORENZO: Okay. Go ahead. You can
6 answer, if you're able to answer it.

7 THE WITNESS: Can I talk to you? Can we
8 go off the record for a minute? May I talk with --

9 MR. SEAMAN: No, I have a question
10 pending. I asked you a question.

11 MR. FIORENZO: We're not going to do it
12 unless you guys say it's in consent.

13 MR. SEAMAN: Yeah.

14 MR. FIORENZO: He's asked if he wants to
15 confer with me.

16 MR. SEAMAN: Would it have anything to
17 do with -- you're allowed to confer with Mr. Fiorenzo
18 if it relates to some sort of privilege or things of
19 that nature.

20 THE WITNESS: That's what it is. It is
21 conversations that we've had and I need to clarify
22 it.

23 MR. SEAMAN: I'll ask you a few
24 questions before I consent to you conferring. Hold
25 on.

Page 37

1 THE WITNESS: Okay.

2

3 BY MR. SEAMAN:

4 Q. Let me get some foundation here first.

5 How many times have you had face-to-face verbal
6 communications with Mayor DiPaola since meeting her?

7 A. I don't know.

8 Q. Can you estimate?

9 A. No.

10 Q. I'm trying to understand what about my
11 question implicates any sort of privilege. Let me
12 make it very clear to you. I'm not asking you to
13 convey to me anything that was told to you by
14 Mr. Fiorenzo or any other attorney with his firm or
15 any information that he gave you. I'm asking for
16 your personal observations of Mayor DiPaola's
17 conduct, so I don't understand how that would impact
18 a privilege. So I don't understand why you would
19 need to confer with your attorney?

20 MR. FIORENZO: Well, why don't you ask
21 the question again so we can better understand and
22 then we'll value whether it has any such implication.

23

24 BY MR. SEAMAN:

25 Q. In any of your direct interaction with

Page 38

1 Mayor DiPaola, either in person or perhaps over a
2 telephone or anything of that nature, can you point
3 to any statements that she has made that you took to
4 be racially inappropriate?

5 MR. FIORENZO: I'm going to object to
6 the form of the question in that the use of the term
7 "racially inappropriate" is vague and ambiguous. I
8 don't know what you mean by that. If you're able to
9 answer it subject to the objection, you may.

10 THE WITNESS: I can't answer it because
11 of needing to talk to you.

12 MR. FIORENZO: The witness has indicated
13 he needed --

14 THE WITNESS: I'd be happy to talk to
15 him and come back with a decision on that.

16 MR. SEAMAN: Well, I'm going to ask you
17 a couple more questions.

18 THE WITNESS: I'll try to be helpful.

19 MR. SEAMAN: I'll ask you -- I'm going
20 to ask you a few more questions.

21

22 BY MR. SEAMAN:

23 Q. During any of your interactions with
24 Mayor DiPaola, either face-to-face or over telephone
25 or anything of that nature, had she made any comments

Page 39

1 to you that refer or relate to a person's racial
2 background?

3 A. Yes.

4 Q. How many times did she make comments to
5 you that refer or relate to a person's racial
6 background?

7 A. I don't remember.

8 Q. And what do you recall her saying to you
9 that related to a person's racial background?

10 A. That comes back to me needing to talk to
11 Mr. Fiorenzo as well.

12 Q. Is that because it is something that is
13 from a communication between you and Mr. Fiorenzo?

14 A. Yes.

15 Q. Well, I'm not asking for any
16 communications between you and Mr. Fiorenzo, I want
17 to make that clear.

18 So outside -- let me ask you this: Was
19 anyone else present with you when Mayor DiPaola made
20 comments about someone's racial background?

21 A. I'm sure, because I've never been there
22 alone. I just don't remember who.

23 Q. Okay. Were any of your attorneys
24 present?

25 A. That I don't -- I don't know. I don't

Page 40

1 recall.

2 Q. What person or group of people was Mayor
3 DiPaola referring to in her comments about any racial
4 background?

5 A. Orthodox Jews.

6 Q. And what do you recall Mayor DiPaola
7 saying about Orthodox Jews?

8 A. A couple things; first one being that
9 we're -- that there's going to be a kosher breast
10 milk storage facility here.

11 Q. I'm going to give you an instruction
12 that I neglected to give you when I began. The court
13 reporter here may interrupt you from time-to-time and
14 ask you to repeat what you said. She is literally
15 asking you to try and rewind and repeat what you
16 said. She's not asking you to expand. She's not
17 interested in asking you a better question than I
18 asked you, which she most likely could do. But she
19 is interested in getting what you said clearly on the
20 record, which helps us all. So if she does that,
21 just please try and repeat what you said the last
22 time.

23 A. Understood.

24 MR. FIORENZO: Which I believe he just
25 did, at least on the one comment.

Page 41

1 MR. SEAMAN: Yes.

2

3 BY MR. SEAMAN:

4 Q. So I understand there was some comment
5 about a kosher breast milk facility in the Emerson
6 project. Is that correct?

7 A. Yeah. Yes.

8 Q. And can you -- when did this comment
9 take place?

10 A. I don't remember.

11 Q. Was it before or after the federal
12 lawsuit was filed?

13 A. Definitely before.

14 Q. Was it before or after Mayor DiPaola was
15 installed as the mayor of Emerson?

16 A. After.

17 Q. Where did that -- where was she when
18 that comment was made?

19 A. The Borough Hall.

20 Q. And do you recall anyone else being
21 present when that comment was made?

22 A. I don't remember.

23 Q. And do you recall precisely what Mayor
24 DiPaola said at that time?

25 MR. FIORENZO: You mean other than what

Page 42

1 he's already testified to?

2 MR. SEAMAN: Yes.

3 THE WITNESS: No.

4

5 BY MR. SEAMAN:

6 Q. Okay. Was that comment made to you or
7 to someone else that was present at the time?

8 A. Just to me.

9 Q. Okay. And was it a question to you
10 about whether the project would have a kosher breast
11 milk facility?

12 A. They wanted to know who -- she wanted to
13 know who the tenants are going to be here in the
14 redevelopment.

15 Q. So this comment related to the tenants
16 who would be occupying the retail commercial spaces
17 in the project. Is that correct?

18 A. Yes.

19 Q. This comment did not have to do with the
20 tenants in any of the residential units?

21 A. This particular comment, no.

22 Q. Were you offended by her comment?

23 A. Of course.

24 Q. Did you express to Mayor DiPaola that
25 you were offended by her comment?

Page 43

1 A. I don't remember what I did.

2 Q. Okay. Aside from that instance, are
3 there any other times that Mayor DiPaola made any
4 comments, in your presence, about any other person's
5 racial or ethnic background?

6 A. In my presence? I don't recall.

7 Q. Did Mayor DiPaola ever make any
8 comments, in your presence, that related to the
9 racial or ethnic background of potential tenants in
10 the affordable housing units of the Emerson
11 development?

12 A. I don't -- I don't remember.

13 Q. Have you ever seen any written
14 communications of any sort, be it letters, texts,
15 e-mails, written statements attributed to the mayor
16 in the media, anything of that nature, that related
17 to the racial or ethnic background of the potential
18 tenants in the affordable units of the Emerson
19 development?

20 MR. FIORENZO: I want an objection to
21 the form. When you use the term "racial or ethnic
22 background", that is vague and ambiguous. So I'll
23 note that objection. You can answer if you're able,
24 subject to that objection.

25 THE WITNESS: If you can -- if she can

Page 44

1 -- can you repeat the question? Thank you.

2

3 (Whereupon, the requested portion of the
4 record was read by the reporter.)

5

6 THE WITNESS: Yes.

7

8 BY MR. SEAMAN:

9 Q. I just want to do this real quick. What
10 have you seen?

11 A. I've seen how her comments of "we don't
12 want the" -- I'm being clear I don't remember the
13 word she used. I don't remember if it was Hasidics
14 or the Orthodox, which one it was, "to come in and
15 take over our town."

16 Q. And, again, was this a verbal statement
17 from her or a written communication of some form? Is
18 that what you're referring to?

19 A. Yeah, I don't have any text messaging.
20 It was a verbal statement.

21 Q. And do you recall where you saw that?

22 A. No.

23 Q. And whether it was Orthodox or Hasidic,
24 it related to people with a Jewish background taking
25 over the town, in terms -- that's a terrible

Page 45

1 question. I'm going to ask a different one.

2 Did -- to your understanding, did that
3 comment have anything to do with the potential
4 tenants in affordable housing units in the Emerson
5 development?

6 A. The answer is yes. It's not just
7 affordable. It's the entire project because she
8 knows that I'm an Orthodox Jew and that's what she's
9 trying to use as her propaganda.

10 MR. SEAMAN: You want to take a break
11 now?

12 MR. FIORENZO: Yeah, he's got to make
13 that call. It's 11 o'clock.

14

15 (Whereupon, a brief recess was taken off
16 the record.)

17

18 BY MR. SEAMAN:

19 Q. Mr. Klugmann, how is Mayor Dipaola using
20 your background as an Orthodox Jew as propaganda?

21 A. So she ran on antidevelopment,
22 antidevelopment being specific to this site.

23 Q. How do you know that she ran on
24 antidevelopment?

25 A. A smart man told me the words "Google".

Page 46

1 Q. So you Googled information on Mayor
2 Dipaola and looked at the results of the Google
3 search?

4 A. Yeah.

5 Q. What specific search terms did you put
6 into Google?

7 A. I don't know.

8 Q. When did you perform this Google search?

9 A. 2018, 2019.

10 Q. Did you -- I'll ask that a little
11 different.

12 How many search results did you look at
13 from that Google search?

14 A. I don't recall.

15 Q. Did you keep copies of any of the web
16 pages that you were directed to as a result of that
17 Google search?

18 A. Yes.

19 Q. Which -- what pages did you keep copies
20 of as a result of that Google search?

21 A. I don't remember right now while I'm
22 sitting here.

23 Q. Do you still have those copies?

24 A. That's a good question. I don't know.

25 But I believe some of it is in my either affidavit or

Page 47

1 lawsuit.

2 MR. FIORENZO: Yeah, we produced --

3 THE WITNESS: I believe a lot of it is
4 in here.

5 MR. SEAMAN: Okay. Well, my request is
6 going to be Joe, to the extent that any of those have
7 not been produced, I would like you to produce them.

8

9 MR. FIORENZO: Sure, if they haven't
10 been, but I believe they have.

11 MR. SEAMAN: Fair enough.

12 MR. FIORENZO: By the way, before we go
13 back, let's -- just to briefly address, you guys had
14 asked whether there was any authority for the
15 proposition that more than one attorney couldn't
16 examine on behalf of the same client. So Steve, you
17 want to just give them.

18 MR. KLEIN: So generally, in courts in
19 the third circuit, there's a rule that, according
20 from this case which is a 1999 decision of the
21 Eastern District of Pennsylvania In Re Diet Drugs
22 Product Liability litigation; it's a February 10th,
23 1999 decision. At Page 15, it talks about how:
24 "Generally, unless there is notice and prior
25 agreement, no more than one attorney for each

Page 48

1 defendant separately represented shall have the right
2 to pose questions to the witness and make objections
3 in connection with each such noticed deposition."

4 MR. BOTTA: So you would agree that
5 there's no court rule about it. Right?

6 MR. KLEIN: The Federal Rules of Civil
7 Procedure do not expressly state that multiple
8 attorneys can or cannot take questions of a witness.
9 However, the practice in this jurisdiction, as
10 reflected in this court case, is that when there's
11 one deponent and multiple parties or multiple
12 attorneys are representing a single witness or a
13 single party in that litigation, they can't both
14 question the witness, as reflected in this case.

15 MR. FIORENZO: That's our position.

16 MR. BOTTA: That's your position.

17 MR. SEAMAN: Well, first of all -- first
18 of all, do you have the full citation to that?

19 MR. KLEIN: Sure. 1999 U.S. Dist LEXIS
20 1797.

21 MR. SEAMAN: Okay. And that's out of
22 the Eastern District of Pennsylvania?

23 MR. KLEIN: Correct.

24 MR. SEAMAN: Okay. So you don't have
25 any cases from the District of New Jersey?

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1 MR. KLEIN: Those are the only ones that
2 have addressed it. And those courts that have
3 addressed it had said if you have multiple attorneys
4 representing a single party, one gets to question the
5 witness.

6 MR. SEAMAN: Okay. I'm just clarifying.
7 You haven't cited a case yet from the District of New
8 Jersey.

9 MR. FIORENZO: No, nor do we have to.
10 You can do your own research on it. You asked for
11 some authority. In the short period of time we've
12 been here, we've taken a quick look and given you
13 some. There may be more.

14 MR. SEAMAN: Okay. Well -- okay. I'm
15 just -- you found an unreported case from the Eastern
16 District of Pennsylvania. Thank you.

17 MR. FIORENZO: Yeah. Yeah. Yeah.

18 MR. SEAMAN: Okay. We'll take your
19 position under advisement.

20 MR. FIORENZO: Okay. And I want to
21 raise it early so you guys can plan accordingly.

22 MR. SEAMAN: Okay. Can you read the
23 last question and answer now? I'm sorry.

24
25 (Whereupon, the requested portion of the

Page 50

1 record was read by the reporter.)

2

3 BY MR. SEAMAN:

4 Q. In any of those Google search results,
5 did you find any specific comments by Mayor DiPaola
6 about Orthodox Jews or Hasidic Jews?

7 A. I don't remember.

8 Q. Do you have the FD-1 in front of you?

9 A. Yeah.

10 Q. Okay. Looking at the Page 4,
11 Paragraph 10 of FD-1, that paragraph says: "After
12 all these carefully -- agreements approved by the
13 Court and Special Master were swept away with the
14 November 28th Emerson elections that brought into
15 power defendant DiPaola and her slate of candidates,
16 who ran on a platform of stopping the project as
17 approved by the Court, Special Master plaintiff and
18 Emerson through the previous administration."

19 Did I read that correctly?

20 A. Yeah.

21 Q. What facts are you aware of that Mayor
22 DiPaola and her slate of candidates ran a platform of
23 stopping the project as approved by the Court?

24 A. I think I answered that. It's in --
25 it's in all of our documents and the affidavit, I

Page 51

1 think; in this lawsuit, it's in here.

2 MR. FIORENZO: I'm sorry. When you
3 refer to "an affidavit", what are you -- just so the
4 record's clear, what are you referring to?

5 MR. SEAMAN: Yeah, I was going to get to
6 it.

7

8 BY MR. SEAMAN:

9 Q. You mentioned an affidavit a couple of
10 times. You haven't -- let's just --

11 MR. FIORENZO: Do you mean your
12 certification?

13 THE WITNESS: Yes, that's what I meant,
14 sorry. Thank you. I'm not so good at this.

15 MR. SEAMAN: Okay. I'm not -- Joe, you
16 can correct me if I'm wrong, but there are no
17 affidavits or certifications or declarations filed by
18 your client in this case in the federal action.

19 MR. FIORENZO: No. I could stand
20 corrected on that by Steve, but there are a number of
21 them in the state proceedings. I think what he says
22 refers to his certification by reference; he's
23 referring to those, which, I think, detail in some
24 measure the extent of the communications on this
25 topic.

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1 MR. KLEIN: Just to be clear, it's in
2 the underlying Mount Laurel action. The 6300-15
3 action.

4 MR. FIORENZO: Right. Right. Yeah, I
5 should be clear. There are two state court
6 proceedings, as you know, the Mount Laurel action and
7 then there's a separate action that's brought by
8 Emerson against Accurate. So in the Mount Laurel
9 action, there are a number of certifications. I
10 think that's what Mr. Klugmann was referring to.

11

12 BY MR. SEAMAN:

13 Q. Mr. Klugmann, you've heard your counsel
14 kind of describe the different landscape of
15 litigation here and where you may or may not have
16 provided sworn statements to the court. Is that your
17 understanding of what you were referring to as well
18 as certifications or affidavits that may have been
19 provided in the context of some of the state court
20 litigation related to this project?

21 A. What do you mean?

22 Q. I'm just trying to understand what you
23 were referring to --

24 MR. FIORENZO: He's asking when you
25 talked about the affidavit, were you referring to the

Page 53

1 certifications that you signed in the state court
2 action?

3 THE WITNESS: Yes. Yes. Yes.

4 MR. FIORENZO: Okay.

5

6 BY MR. SEAMAN:

7 Q. Well, as you sit here today, can you
8 describe for me what your understanding of Mayor
9 Dipaola and her slate of candidates' platform was to
10 stop the project as approved?

11 A. She ran on antidevelopment; that's how
12 she won. She brought in or she had other people run
13 to come and be on the counsel with her. And her
14 antidevelopment, which is everywhere, and everything
15 she has to say about it was something that she's not
16 shy about. She doesn't like this project. She
17 didn't want this project and she wishes it was never
18 here, even until today.

19 Q. All right. I direct you to Paragraph 12
20 of the First Amended Complaint. That paragraph
21 reads: "The ultimate goal of this course of action
22 is to prevent racially diverse minorities from moving
23 into Emerson, which defendants connect to Mount
24 Laurel low income housing."

25 Do you see that?

Page 54

1 A. Yes.

2 Q. Did I read that correctly?

3 A. Yes, you did.

4 Q. Okay. So what facts are you aware of
5 that demonstrate that it was the ultimate goal of
6 Mayor Dipaola to prevent racially diverse minorities
7 from moving into Emerson?

8 A. Yeah. There's 29 affordable units here
9 on this project. She wants to shut this project
10 down, which includes 29 affordable units. We have
11 been able to move forward on 145 units, which has 22
12 affordable units -- move forward with the
13 construction of the 145 units in spite of her, due to
14 the good work of my attorneys and the court, who have
15 since put in place a court order monitor, Judge
16 Carroll, who, without him, we'd be nowhere; who The
17 Borough of Emerson is paying for, 100 percent of. So
18 what she did is she tried to make the situation where
19 that will never happen. Those affordable units will
20 never come into town, which is minorities and people
21 of lesser income. And that's what she tried to stop.
22 That's what she's trying to stop still.

23 Q. How do you know that minorities are
24 the -- well, before, I guess, you used the term
25 "minorities"; what does that mean to you?

Page 55

1 A. She doesn't want the Jews there.

2 Q. So when you used the phrase "minorities"
3 before, that was Jewish people?

4 A. Part of it.

5 Q. Any other groups fit within the
6 definition of minorities as you're using it?

7 A. Anybody that's going to fit under the --
8 whoever is able to get affordable units.

9 Q. Have you made any determination -- let
10 me ask it this way.

11 Are you aware of the racial background
12 of individuals who qualify for affordable units in
13 Bergen County?

14 MR. FIORENZO: Generally, you're
15 referring to?

16 MR. SEAMAN: Yes.

17 THE WITNESS: No.

18

19 BY MR. SEAMAN:

20 Q. Are you aware of the racial background
21 of any of the individuals who will potentially
22 qualify for affordable units in the Emerson project?

23 MR. FIORENZO: You mean the project
24 that's not yet complete?

25 MR. SEAMAN: Yes.

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1 THE WITNESS: No.

2

3 BY MR. SEAMAN:

4 Q. What facts are you aware of that
5 specifically connect Mayor DiPaola's proposition to
6 redevelopment?

7 MR. FIORENZO: I'm going to object to
8 the form and that calls for a legal conclusion. You
9 used the word "connect". You're asking for him to
10 give opinions on causation. I think that's improper.

11 MR. SEAMAN: I'm not asking him for his
12 opinions on the causation.

13 MR. FIORENZO: It sounded that way to
14 me. I objected to form. I didn't instruct him not
15 to answer.

16 MR. SEAMAN: I didn't even finish my
17 question, Joe.

18 MR. FIORENZO: Oh, I thought you did.

19 MR. SEAMAN: No, I hadn't, so.

20 MR. FIORENZO: Okay. When you paused, I
21 thought you were done.

22 MR. SEAMAN: I was not done.

23 MR. FIORENZO: Okay. Then why don't you
24 complete it and then I'll make my objection.

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1 BY MR. SEAMAN:

2 Q. What facts are you aware of that support
3 the statement that the ultimate goal of Mayor
4 DiPaola's course of action is to prevent racially
5 diverse minorities from moving into Emerson?

6 A. Her antidevelopment propaganda.

7 Q. And that antidevelopment propaganda, are
8 there any instances you're aware of where any of that
9 propaganda references racial diversity?

10 MR. FIORENZO: Objection to the form.

11 You may answer.

12 THE WITNESS: Well, it comes back to the
13 fact that I know that she doesn't want Orthodox Jews
14 coming into her town, so when you put that together.

15
16 BY MR. SEAMAN:

17 Q. And please start at the beginning and go
18 to the end, and tell me everything that you're aware
19 of that Mayor Dipaola has done that shows that she
20 doesn't want Orthodox Jews coming into The Borough of
21 Emerson?

22 A. The first thing is she fought the
23 development, which includes fighting off the Mount
24 Laurel lawsuit, which is in place, which is part of
25 the settlement which allows for different, diverse

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1 type of people to come in here. That's the first
2 thing.

3 The second thing is, is the comments
4 that have been made, which I've expressed before, of
5 how she does not want this to become a town filled
6 with Orthodox Jews to come take over her town.

7 Q. You've told me about the one comment
8 about a kosher breastfeeding facility. What other
9 comments are you aware of that Mayor Dipaola has made
10 that she doesn't want Orthodox Jews taking over the
11 town?

12 A. When she ran the second term, she went
13 around to people's houses telling them this.

14 Q. How are you aware that Mayor Dipaola
15 went around campaigning for a second term and telling
16 people this?

17 A. Some of it, I can't say. And some of it
18 I can tell you that I got phone calls from local
19 people.

20 Q. Why can't you say? Is there some sort
21 of privilege attached to it?

22 A. Yes.

23 Q. Is that some -- are you -- would that
24 delve into communications with your lawyer?

25 MR. FIORENZO: There are certain

Page 59

1 questions that we've had with him where we shared
2 information. I think that's what he's referring to.

3 THE WITNESS: Yes.

4

5 BY MR. SEAMAN:

6 Q. Okay. All right. Aside from anything
7 that you would have learned from your lawyer, can you
8 please identify for me the basis for your
9 understanding that Mayor Dipaola campaigned for a
10 second term -- let me finish the question --
11 campaigned for a second term with intentions to keep
12 Orthodox Jews from taking over the town?

13 A. Yeah. Yeah. But if I can, I'd like to
14 back it up a second. And that is that when she
15 became mayor, to me, I've done this in many
16 municipalities. It was a normal course of action for
17 me to have communication with the attorney -- with
18 the town, borough, city mayor, which is why I told
19 you before it could be there's text messages. I just
20 don't remember.

21 We sat down a few months after she
22 became mayor to have a meeting. She made it very
23 clear after she stopped picking up my phone calls or
24 text messages that nothing should be -- nothing
25 should come through -- I shouldn't call her anymore.

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1 Everything has to go through attorneys. There's no
2 lawsuits. There's no nothing. Then she started
3 firing everybody that worked in The Borough. And so
4 it took -- it didn't happen overnight, but one of
5 them was that they got rid of the existing borough
6 administrator or he left because he didn't like her.
7 I have no idea what it was, but either way, she then
8 brought in a new borough administrator who is a
9 notorious antisemitic. He was the borough
10 administrator in, I believe, it's Ramapo. His name
11 is Rob Hermansen. He got fired from there because
12 Ramapo had a massive lawsuit about an eruv. An eruv
13 is the string that allows --

14 Q. I'm aware of what an eruv is.

15 A. Yes.

16 MR. FIORENZO: Well, you can finish your
17 answer.

18 THE WITNESS: An eruv is basically
19 creating an area that allows us Orthodox Jews to
20 carry inside as opposed to walking on the streets on
21 the Sabbath and carrying stuff. I'm sure you can
22 Google it and see the history of everything that he
23 has done over there. So that was all part of the --
24 together with the history that she had of
25 antidevelopment and bringing in such type of people,

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1 together with the attorney that she brought in, John
2 McCann, who -- I'll put it as not a good person with
3 all of the stories and stuff online that get posted
4 by The Borough or by her on her Facebook page, and
5 then the comments that would be posted to her
6 Facebook page, to her post that she would put in
7 there about the development all led to the fact of
8 not only do we know that she doesn't want this
9 development, she doesn't want me, Jack Klugmann, in
10 her town. And me, Jack Klugmann, being an Orthodox
11 Jew; and that's how she promoted her propaganda. And
12 it continued. It continued until she had to go redo
13 her -- to go where she ran for re-election. I don't
14 know if I answered your question or not.

15 Q. Well, I don't know -- do you feel you've
16 answered my question completely?

17 A. I hope so.

18 Q. Okay.

19 MR. SEAMAN: I'm going to ask the
20 reporter just to read the question back and then I'm
21 going to ask you again to make sure that you've
22 answered the question completely. Because I want
23 your complete answer.

24 THE WITNESS: Yeah.
25

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(Whereupon, the requested portion of the record was read by the reporter.)

THE WITNESS: Yes, I answered it.

BY MR. SEAMAN:

Q. Who is the previous borough administrator?

A. I forgot his name.

Q. Do you know when he was fired?

A. No.

Q. Do you know when Mr. Hermansen was hired as borough administrator?

A. Estimate 2019.

Q. Are there any other borough employees, besides the previous borough administrator, that you're aware of -- and you said she fired borough employees. You mentioned the borough administrator. Any other borough employees that you indicate were fired by Mayor Dipaola because of her opposition to your project?

A. The attorney, their redevelopment attorney, and their engineer, and I think their planner.

25 Q. And when you say these individuals were

Page 63

1 fired, do you know if they were actually --
2 withdrawn.

3 Have you been involved in interactions
4 with municipal governments when they've had a change
5 in control based on a political party?

6 A. That's vague. I don't know -- I don't
7 know what you mean by that.

8 Q. Okay. Have you ever been working with
9 any of the towns in terms of redevelopments or
10 project that you are engaged in where the political
11 party in control of the local government changed?

12 A. Yes.

13 Q. And in the instances where those
14 political parties changed, did you ever observe a
15 change in terms of the professionals who served the
16 municipality?

17 A. No.

18 Q. Can you identify, other than Emerson,
19 municipalities where you've been present and you've
20 observed a change in the control of a governing body?

21 A. Raritan.

22 Q. When did there -- when was there a
23 change in control of Raritan?

24 A. Shortly after we started construction.

25 Q. And what was the makeup of the governing

Page 64

1 body before that shift?

2 A. Which party were they part of?

3 Q. Yes.

4 A. I don't know.

5 Q. Which party took control?

6 A. I don't know.

7 Q. And when one party took control of the
8 other, they retained the same borough attorney?

9 A. They did, yes.

10 Q. They retained the same municipal
11 engineer?

12 A. Yes.

13 Q. And they retained the same planner?

14 A. They did.

15 Q. Any other instances where you've
16 observed towns with a change in control?

17 A. Yeah, in Parsippany.

18 Q. And when did the change in control in
19 Parsippany take place?

20 A. Before I started construction.

21 Q. And what was the shift between the
22 parties?

23 A. I don't know.

24 Q. And you observed them retain the same
25 attorney with that new control of the government?

Page 65

1 A. I don't know.

2 Q. Do you know if they retained the same
3 engineer?

4 A. I don't.

5 Q. Do you know if they retained the same
6 planner?

7 A. I don't.

8 Q. Did Raritan have a redevelopment
9 attorney at the time that there was a shift in
10 government?

11 A. I don't remember. I don't remember.

12 Q. Did Parsippany have a redevelopment
13 attorney?

14 A. Yes.

15 Q. Did they retain the same redevelopment
16 attorney?

17 A. I don't remember because I got my
18 building permit.

19 Q. You'd indicated previously that outside
20 of what you may have learned from your attorney, you
21 have heard that Mayor Dipaola made negative comments
22 about Orthodox or Hasidic Jewish people as part of
23 her re-election campaign. Do you recall that?

24 A. Yes. Yes.

25 Q. Who are the people who have told you

Page 66

1 that?

2 A. I don't remember, but I could probably
3 find out.

4 MR. SEAMAN: Well, I would ask you to
5 find out and we'll follow this up with a letter to
6 counsel, but I'm going to ask you to identify any
7 individuals who have provided that information to
8 you.

9 THE WITNESS: Perfect.

10 MR. FIORENZO: Send that and we'll
11 respond.

12 THE WITNESS: Yes.

13

14 BY MR. SEAMAN:

15 Q. And do you recall -- let me ask a little
16 bit about these people, if you know. Are they
17 residents of Emerson?

18 A. Yeah.

19 Q. And do you generally recollect what they
20 told you they heard from Mayor Dipaola?

21 A. The gist of it was how she doesn't want
22 it to turn into -- he's from Lakewood, he's an
23 Orthodox Jew, and she doesn't want it to turn into
24 Lakewood.

25 MR. FIORENZO: Yeah, did you get that;

Page 67

1 he's from Lakewood, he's an Orthodox Jew, and we
2 don't want it to turn into Lakewood.

3 MR. BOTTA: Make sure we get what he
4 said.

5 MR. SEAMAN: We're going to get the
6 record. That's all it is.

7

8 (Whereupon, the requested portion of the
9 record was read by the reporter.)

10

11 THE WITNESS: No, let me add in the one
12 more thing.

13 MR. FIORENZO: No, he also said he's an
14 Orthodox Jew.

15 THE WITNESS: He's from Lakewood. He's
16 an Orthodox Jew and we don't want it to turn into
17 that.

18

19 BY MR. SEAMAN:

20 Q. Was it one person or more than one
21 person?

22 A. More than one person.

23 Q. Can you estimate the number of people
24 who told you words to that effect?

25 A. I could. I think it was three people,

Page 68

1 but I don't remember, because I don't remember which
2 ones told it to me offhand.

3 Q. Did anyone, at any time, convey to you
4 statements by Mayor Dipaola about her opposition to
5 your project that referred or related to any minority
6 group other than Orthodox or Hasidic Jewish people?

7 A. Well, I would include her negative
8 statements towards affordable housing. I would
9 include that as a negative comment towards minorities
10 or -- yeah, so the answer is yes.

11 Q. Okay. So you equate any comments that
12 she made about affordable housing to minorities?

13 A. Yes.

14 Q. And why do you do that?

15 A. Because that's what it is.

16 Q. How do you -- what does the basis for
17 you saying that's what it is?

18 A. It's people who are -- aren't making --
19 can you ask that question again? Now I'm confused.

20 MR. SEAMAN: Can you read the question
21 back please?

22
23 (Whereupon, the requested portion of the
24 record was read by the reporter.)

Page 69

1 THE WITNESS: Oh, the one before that.
2

3 (Whereupon, the requested portion of the
4 record was read by the reporter.)
5

6 THE WITNESS: Affordable housing is to
7 give housing to the people that can't afford the
8 regular -- the regular stuff, which is typically
9 people who make less money, people who just came into
10 the country and they just got work VISAs, and it's
11 all different types of people that come into the --
12 that can't get regular housing or can't afford
13 regular housing and that's what -- this is an
14 opportunity for them to have an affordable unit.

15 Q. Have you seen any studies or empirical
16 data that indicate the percentage of minority groups
17 that occupy affordable housing in the State of New
18 Jersey?

19 MR. FIORENZO: On a statewide basis?

20 MR. SEAMAN: On a statewide basis for
21 now.

22 THE WITNESS: No.
23

24 BY MR. SEAMAN:
25

Q. Have you seen any data of that sort that

Page 70

1 identifies the makeup of affordable housing in Bergen
2 County?

3 A. Yes.

4 Q. And what empirical data have you seen on
5 that?

6 A. I don't remember because it was back
7 when we were going for our approvals there, so I
8 don't remember.

9 Q. In what context did you see that data?

10 A. I wanted to understand what does it
11 meant to have 29 affordable units there and why was
12 the mayor so against it?

13 Q. Can you describe for me what you -- what
14 you saw?

15 A. I don't remember. I just remember that
16 there's a conception, I don't know if conception is
17 the right word, but there's a view out there that
18 people think that affordable units is Section 8
19 homes; and it's not. So I was reading up about
20 what's the difference, what does it mean there's
21 different levels of low or medium or different types
22 of income, and I was trying to understand what it is.

23 Q. What is your understanding of Mayor
24 DiPaola's interpretation of affordable housing?

25 MR. FIORENZO: I'm going to object. How

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1 could he possibly know what Mayor DiPaola's
2 interpretation is unless he can view her mind and
3 then state what's in her mind? No one can do that.
4 It's not competent, I object to it. It's an improper
5 form of the question.

6 MR. SEAMAN: You can answer the
7 question.

8 THE WITNESS: I don't know. I know she
9 doesn't want affordable units.

10
11 BY MR. SEAMAN:

12 Q. You know what?

13 A. She doesn't want affordable units.

14 Q. And how do you know she doesn't want
15 affordable units?

16 A. Because she said it.

17 Q. When did she say she didn't want
18 affordable units?

19 A. When she said she doesn't want the
20 project.

21 Q. When she said she doesn't want the
22 project, did she -- had she specifically mentioned
23 the affordable housing component of the project?

24 A. Yeah, because there's another component
25 to this project of seven off-site units and she's

Page 72

1 fighting me about being able to build those without
2 trying to remedy the lawsuit which is in place, which
3 is actually a settlement, I should say, that's in
4 place for the Borough of Emerson. And if she really
5 cared about the people having affordable housing,
6 which most people do, and if she really understands,
7 you realize that they're good people. They just
8 can't afford certain units. Then you would try to
9 make sure -- you would do whatever you can. When
10 you're a leader of a municipality, you do whatever
11 you can to make sure that you can have affordable
12 units within reason. She's doing the -- she's having
13 the adverse effect in the sense that she doesn't want
14 it. She doesn't want affordable units here and the
15 history and the lawsuit and everything on Google
16 could back that up.

17 Q. Are you aware of any other reason that
18 the Borough of Emerson objected to the seven off-site
19 units related to enforcement of the Borough zoning
20 laws or things of that nature?

21 A. So I'm going to answer that question
22 with a little history here. The history is that
23 Mayor Dipaola has never done anything to help
24 anything with this project. Whenever she can find an
25 opportunity to do something to destroy it, she does

Page 73

1 it. So if she decides -- back to your question, and
2 all that stuff is in this complaint, the First
3 Amended Complaint and there's a lot of it, at least.
4 So when it comes to including to not wanting to give
5 me a fence permit, which is done for safety reasons,
6 including not giving us demo permits, and then
7 complaining that there's people living in the houses
8 when we asked for a demo permit so we could make the
9 properties safe and put up fences, she wouldn't do
10 it. And that's really her M-O because, instead of
11 just talking to me, she says everything had to go
12 through an attorney because she's just an
13 obstructionist. So if she found something that can
14 obstruct me trying to keep my word to the Borough of
15 Emerson, which is to build 145 units on one property
16 with 22 affordable and 7 off-site affordable, she
17 will do whatever she can, whether she has the right
18 to or not, to obstruct it, because that's what she's
19 doing.

20 Q. Turning to Page 16 of the First Amended
21 Complaint and Paragraph 55. There are a number of
22 subparagraphs running across the following pages and
23 I want to direct your attention to those.

24 A. Sure.

25 Q. 55A is captioned as "refusal to issue

Page 74

1 demolition permit". Do you see that?

2 A. Yes.

3 Q. What are you aware of that Mayor Dipaola
4 specifically did to result in the refusal to issue a
5 demolition permit?

6 A. Everything goes through her. She runs
7 that Borough like a hawk, helicopter, whatever words
8 you want to use. She runs with an iron -- whatever
9 the word is.

10 MR. FIORENZO: Iron fist.

11 THE WITNESS: Iron fist, there you go.
12 But the hawk also. The hawk something --

13 MR. BOTTA: You were a mayor.

14 THE WITNESS: That's why I'm nervous
15 what I say in front of him about a mayor.

16 MR. SEAMAN: He was a mayor too.

17 THE WITNESS: Oh, really?

18 MR. FIORENZO: It's true.

19 THE WITNESS: Where was that? Where
20 were you? No pressure.

21 MR. BOTTA: I'm not being deposed.

22 MR. SEAMAN: Off the record.

23
24 BY MR. SEAMAN:

25 Q. Are you aware of any -- let me ask you

Page 75

1 this way: Can you identify any specific actions,
2 that you're aware of, that Mayor Dipaola took that
3 resulted in the refusal to issue the demolition
4 permit as alleged in Paragraph 55A?

5 A. Yes. We spoke to the building inspector
6 at the time and we asked him, "Where's our permits?"
7 And he told us, and I don't remember his name, and I
8 believe he's not there anymore, so if I find that
9 out -- he said that, "We were told to not issue you
10 permits here." And I said, "By who?" And he said,
11 "By the powers that be."

12 Q. And did he tell you that he was told at
13 the time that Mayor Dipaola was the mayor?

14 A. You want to know if he knew that Mayor
15 Dipaola?

16 Q. I'm trying to set the time frame here.
17 I'm just trying to set the context here.

18 A. She was definitely mayor then.

19 Q. And you don't remember this individual's
20 name?

21 A. No.

22 Q. The next -- I'll just follow that up.
23 Other than that indication from the person whose name
24 you don't recall, are there any other specific acts
25 that you can point to that Mayor Dipaola was in with

Page 76

1 regard to refusal to issue a demolition permit as
2 alleged in Paragraph 55A?

3 A. I don't remember offhand.

4 Q. Looking at Paragraph 55B, the "refusal
5 to issue a fence permit". Can you identify what
6 specific acts you're aware of that Mayor Dipaola
7 undertook with regard to the refusal to issue that
8 fence permit?

9 A. Yeah. We submitted to the -- we asked
10 for a -- if we could put up fences and we were told
11 no. We had to submit a zoning permit, which we did,
12 outlining with a color coded map of where -- exactly
13 where the fence was going to go. She said -- she
14 came out and said, I think even on record, but this
15 is a -- and I think that she's concerned about the
16 parking that's there for the existing stores or for
17 the commuters that are going to ride the trains and
18 which really was -- I'm going to jump to, if I may,
19 something which is not in here, but I'm going to talk
20 about how I know that she was involved with it. When
21 we took over, there was a tenant here called Cork &
22 Keg Liquor Store. She went ahead and -- we -- it was
23 -- they were a tenant on the property that we settled
24 with the owners to buy as part of us buying the
25 property. She worked with the tenant to make sure

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1 that they wouldn't move and to prolong me from doing
2 this development in order to try to, in my opinion,
3 bankrupt the project. And you may ask how do I know
4 this? Because I drove by the property and I saw her
5 there one day talking to the owners. We have e-mails
6 where the Borough is asking the state for questions
7 about how it works and what can be done. So, again,
8 she wanted to make sure that the stores could be
9 operating and she didn't care about the safety of the
10 site and that's why she held up the issue, made sure
11 that the fence permit was not issued. This is not a
12 counsel issue. It's not a mayor conversation even.
13 It should never be a mayor conversation. And I say
14 this in respect to the two mayors sitting here, this
15 is a zoning officer who goes by the law, the code,
16 and she got her nose -- and like everything else, she
17 stuck her nose into it.

18 Q. All right. You mentioned the Cork & Keg
19 there. So when you observed Mayor Dipaola at the
20 Cork & Keg, were you able to hear what she was
21 saying?

22 A. No.

23 Q. Do you have any -- do you have any basis
24 to tell me what she was saying that time you observed
25 her at the Cork & Keg?

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1 A. Yes. Yes, because she said it on record
2 as well many times at the council meetings. She
3 said, "These are my very good friends and I need to
4 make sure they're being taken care of." And when it
5 came to another tenant that was there, which is in
6 here, which is K and L, she never -- when one tenant
7 we had that -- to try to -- when you read K and L, it
8 really describes it.

9 MR. FIORENZO: You're referring to
10 letters K and L on Page 18 of FD-1?

11 | THE WITNESS: Yes, on Page 18, yes.

13 BY MR. SEAMAN:

14 Q. So that's really into a failure to
15 respond to a cease and desist letter and a failure to
16 proceed with condemnation of Caiqui Zheng,
17 C-A-I-Q-U-I Z-H-E-N-G; that's what you're referring
18 to?

19 A. Yes.

20 Q. What specific acts did you observe Mayor
21 Dipaola undertake with regard to item K, the failure
22 to respond to the cease and desist letter?

23 A. Exactly that. She failed -- they didn't
24 do anything. They didn't -- they have an obligation
25 under the Redeveloper's Agreement to make sure this

Page 79

1 project gets built and this would -- this would
2 destroy that because it would go straight to summary
3 judgment. And they never responded. I had to step
4 in, at the time, and have an attorney respond to
5 that. And eventually we won it, but it had nothing
6 to do with the Borough.

7 Q. Again, I asked you for specific acts
8 from the mayor that you're aware of. Did you see her
9 say something? Did you hear her say something? Did
10 you see her do something? Did you read something she
11 put in some sort of directive?

12 MR. FIORENZO: I'm sorry, it's unclear
13 to me. What are we specifically referring to now?
14 Which of these?

15 MR. SEAMAN: Item K, the cease and
16 desist letter.

17 MR. FIORENZO: K? Okay. Well, K --
18 okay, the cease and desist.

19 THE WITNESS: No, I have nothing, not
20 that I can recall.

21
22 BY MR. SEAMAN:

23 Q. Okay. And as to Item L, the failure to
24 proceed with the condemnation of the person who is --
25 what specific acts did you observe Mayor Dipaola

Page 80

1 undertake to initiate that action?

2 A. She took no action.

3 Q. And did you personally observe any
4 directives that she gave or see anything in writing
5 of any sort of directive from her of that nature?

6 A. No, I'm just a businessman. I run a
7 business. If somebody in my company does something
8 wrong, it's my fault. So when you're the mayor, I
9 assume it's the same.

10 Q. Are you familiar with the phrase "a fish
11 stinks from the head down"?

12 A. No, but I like that.

13 Q. Other than the mayor's position as the
14 chief executive officer or the governor or whoever it
15 may be, what other actions can you tell me that
16 involve her doing any act or making any direction
17 that relates to any of the items in Paragraph 55A
18 through L?

19 MR. FIORENZO: Okay. I'm going to
20 object to that. It's overly broad. I thought we
21 were talking about the Zheng condemnation. You're
22 asking about anything in the complaint? I think
23 that's unduly broad.

24 MR. SEAMAN: No. No, Joe, I wasn't
25 asking about anything from the complaint. I was

Page 81

1 asking about Paragraph 55.

2 MR. FIORENZO: Paragraph 55. Yeah,
3 well, Paragraph 55 goes on for, I don't know, three
4 pages.

5 MR. SEAMAN: Okay. I'll withdraw --
6 Joe, Joe, I'll withdraw the question.

7 MR. FIORENZO: It has A through L.

8 MR. SEAMAN: Joe, I'll withdraw the
9 question. Okay?

10 MR. FIORENZO: Yeah. Good.

11

12 BY MR. SEAMAN:

13 Q. Again, so we're going to look at
14 Paragraph B, the fence permit. What specific actions
15 or directives on the part of Mayor Dipaola are you
16 aware of that relate to the refusal to issue a fence
17 permit?

18 MR. FIORENZO: Please take a look at it
19 before you answer. Okay?

20 THE WITNESS: Yeah. We originally had
21 an agreement from the zoning officer about putting a
22 fence up. Then we were told we're not going to get
23 it. It has -- it's going to be discussed by council.
24 If you can look back at the YouTube, which I believe
25 they have all these council meetings, you'll find

Page 82

1 that it was then brought up as a public conversation,
2 which then the mayor said that, "We want to make sure
3 it doesn't hurt the parking of the tenants that are
4 there."

5

6 BY MR. SEAMAN:

7 Q. Any other specific actions by the mayor?

8 A. Not that I recall.

9 Q. Okay. Looking at Item C, "demand of
10 inappropriate information from asbestos contractor",
11 what specific actions are you aware of that Mayor
12 Dipaola undertook to relate to that item?

13 MR. FIORENZO: Again, please review and
14 give an answer.

15 THE WITNESS: Again, we were told by
16 that inspector that I was telling you about that we
17 were going to get our permits. And then we were told
18 that he was -- that he was told to get all this
19 information, even though he's never had to request
20 this before.

21

22 BY MR. SEAMAN:

23 Q. And did he tell you who told him to do
24 that?

25 A. He referenced the mayor.

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1 Q. And, again, this is the building
2 inspector whose name you don't recall?

3 A. I don't, that's correct.

4 Q. What specific actions are you aware of
5 that Mayor Dipaola was involved in with regard to
6 Item D, "denial of permits for utility
7 disconnections"?

8 MR. FIORENZO: Again, please take a look
9 at it and then answer.

10 THE WITNESS: Yeah. I don't recall
11 anything like that one.

12

13 BY MR. SEAMAN:

14 Q. Looking at the next page, Item E, "more
15 delay of demolition permits" is how it's captioned.
16 What specific actions are you aware of that Mayor
17 Dipaola undertook in connection with the purported
18 more delay of demolition permits? And take your time
19 to look at the bullet point before you provide an
20 answer.

21 MR. FIORENZO: Please.

22 THE WITNESS: Same thing, the building
23 inspector referencing that he was told to cause us
24 these issues.

25

Page 84

1 BY MR. SEAMAN:

2 Q. Same building inspector you referred to
3 previously?

4 A. Yes.

5 Q. Was this -- you've mentioned the
6 building inspector now with regard to a couple of
7 different ones. Was this one interaction with the
8 building inspector or more than one interaction?

9 A. Multiple.

10 Q. With respect to each of these bullet
11 points you had a separate action; is that your
12 recollection?

13 A. I don't remember.

14 Q. "Refused to issue sewer and water
15 cutting and capping permits". What information are
16 you aware of with regards to Mayor DiPaola's
17 directive or involvement in that point?

18 A. I can't recall.

19 Q. "Sign off by fire and police", under
20 Item G. What specific action or involvement by Mayor
21 Dipaola are you aware of that relate to that bullet
22 point?

23 A. That she wanted to make sure that fire
24 and police were satisfied with this project.

25 Q. How do you know that she wanted to make

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1 sure the fire and police?

2 A. Because she told us this.

3 Q. She told you, personally?

4 A. By one of our meetings that we had,
5 yeah.

6 Q. What did she tell you?

7 A. Exactly that. That she wants to make
8 sure that fire and police sign off. And we said, at
9 the time, "Never heard of something so -- there's no
10 code for this. It's not necessary." We even went to
11 the fire or police, I don't remember which one it
12 was, and they said, "What do you want from us? Where
13 do we sign? There's no signing here. We don't
14 sign."

15 Q. What's -- moving on to -- stop.

16 Other than that conversation with Mayor
17 Dipaola seeking the sign off by fire and police, are
18 there any other actions that you're aware of that she
19 undertook related to that bullet point?

20 A. Not that I recall.

21 Q. "Delay in issuance of resolution
22 compliance". What actions of Mayor Dipaola are you
23 aware of that relate to that point?

24 MR. FIORENZO: Take a look at the bullet
25 point, please. Please read it.

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1 THE WITNESS: I read that, yeah. So
2 there's a history to that in the sense that we were
3 pretty much through resolution compliance. And I
4 don't recall the dates. And then she fired that
5 engineer who reviewed the plans, and brought in a new
6 engineer, who made up a bunch of stuff, like,
7 basically started over again, which is part of our
8 damages of what we're looking for of all the work we
9 re-had to do because of all the, like I write in
10 here, previously imposed conditions which have no
11 basis and there was no reason for them, except for
12 doing what she does, which is to just delay this
13 project or try to make it not happen at all.

14 Q. And who was the engineer who was
15 originally engaged?

16 A. I don't remember.

17 Q. And who is the new engineer?

18 A. I think, this is a guess, (phonetic)
19 Neglia.

20 Q. Again, I gave you an instruction before
21 about guesses and estimates and I just want to
22 understand.

23 A. And I followed it.

24 MR. FIORENZO: I mean, it's all in the
25 documents. It's in the documents. Show him.

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1 MR. SEAMAN: I understand.

2 THE WITNESS: But I followed the
3 instruction, also.

4 MR. FIORENZO: No, I'm not, you know,
5 I'm just saying it's -- I can tell you who it is, if
6 you want.

7 MR. SEAMAN: No. I appreciate that.
8 I'm just trying to keep him with the guesses, is all.
9 It's not a consequential statement one way or the
10 other.

11 MR. FIORENZO: Agreed.

12

13 BY MR. SEAMAN:

14 Q. What is your understanding of Mayor
15 DiPaola's involvement in the replacement of that
16 borough engineer?

17 A. I have no doubt it was all her.

18 Q. Well, what things can you point to that
19 were done or said by her or others that leads you to
20 have no doubt it was her?

21 A. She wanted to get rid of anybody that
22 had to do with Lou Lamatina and help building and who
23 was the prior mayor. And she wanted to bring in the
24 people that she felt would make sure that everything
25 is done perfect, so that if it's not done perfect,

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1 she can stop the project.

2 Q. With regard to bullet point I, "refusal
3 to execute municipal consent for TWA, temporary works
4 approval, what are you aware of that Mayor Dipaola
5 did in connection with refusing to execute the
6 municipal consent for the TWA?

7 A. Just a refusal to act.

8 Q. Has a temporary works approval ever been
9 signed by the -- on behalf of the Borough?

10 A. Yes, recently.

11 Q. When was it signed?

12 A. In 2023.

13 Q. Who signed it?

14 A. I don't know.

15 Q. Do you know if Mayor Dipaola was
16 involved in the signing of that, in any way?

17 A. I don't know.

18 Q. Item J, "the failure to contest the
19 written lawsuit", and I ask you to review that and it
20 specifically indicates within this that something was
21 done at the direction of defendant DiPaola, near the
22 bottom of that paragraph. So please review that and
23 tell me everything that you're aware that was
24 directed by Mayor Dipaola to fail -- fail to answer
25 or otherwise respond to the product of written

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1 lawsuit?

2 A. Before I get to that, I just want to
3 back up to I, just one last point. In my opinion,
4 the only reason I have the TWA permit today and the
5 only reason why we have building permits and
6 inspections and there's construction going on on-site
7 is 100 percent due to Judge Carroll that's in place.
8 He's the court ordered monitor by Judge Padovano.
9 He's been excellent all the way around, and if wasn't
10 for him, we wouldn't have permits, inspections. And
11 by the way, I want to put on the record that the
12 inspections that they're requesting are crazy. I
13 don't have this, third-party inspections they're
14 mandating that I don't do in any other municipality
15 anywhere. Not in any municipality, so I'm putting
16 that on the record that all the extra money they're
17 making me spend because that's what she wants me to
18 do.

19 Back to your question about J, I don't
20 remember that offhand.

21 Q. Looking at Page 18 now of the First
22 Amended Complaint, Paragraph 57 that begins with a
23 sentence "Defendant DiPaola orchestrated the above
24 municipal actions." Do you see that?

25 A. Yes.

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1 Q. Is there anything that you're aware of,
2 other than what you've told me previously related to
3 Paragraph 55, that Mayor DiPaola did to orchestrate
4 those actions?

5 A. I don't recall it right now.

6

7 BY MR. SEAMAN:

8 Q. Looking at Paragraph 58, it begins:
9 "After her election as mayor, DiPaola issued a
10 directive to municipal government to suspend all
11 actions on redevelopment and affordable housing under
12 the final judgment."

13 Do you see that?

14 A. Yes.

15 Q. Is there a written directive of some
16 nature?

17 A. I don't remember offhand. It's been a
18 while.

19 Q. Have you ever seen a directive of that
20 sort?

21 A. I don't remember.

22 Q. Looking at Paragraph 59 on Pages 18 and
23 19, the final paragraph of that -- or the final
24 sentence of that paragraph begins: "At her
25 direction," and then continues, "officials concocted

Page 91

1 new requirements for a demolition fence and utility
2 permits to obstruct delay and increase plaintiff's
3 project, consistent with the representations that she
4 would stop the project from being built."

5 Do you see that?

6 A. Yes.

7 Q. What, if anything -- what is there, if
8 anything, in addition to what you've already told me
9 that constitutes a direction by Mayor Dipaola to
10 officials to concoct new requirements for demolition,
11 fence, and utility permits?

12 A. I have nothing new. I told you what
13 they told me already.

14 Q. Okay. That's the conversations, I
15 apologize. That's the conversations that you had
16 with the building official whose name you can't
17 recall?

18 A. Yeah. And I want to think back to the
19 conversation I had with Rob Hermansen. Yeah. After
20 I had an issue with one of the guys with the
21 demolition permit, I went to him, and I asked him for
22 his help. And he told me, "I'm trying to do
23 everything I can to help you, but this is what the
24 mayor and our attorney are telling me they want."
25 Which I found out later was you can't trust a word

Page 92

1 that Mr. Hermansen says.

2 Q. When did you find out that you couldn't
3 trust a word that Mr. Hermansen says?

4 A. When he made a recording of me.

5 Q. As you sit here today, do you believe
6 Mr. Hermansen was being truthful when he made the
7 statement to you that you mention about doing
8 everything he could to help you get the demolition
9 permit?

10 MR. FIORENZO: Except for being told by
11 the mayor and the attorney, you've only characterized
12 part of it. Is that the question?

13 MR. SEAMAN: Yes.

14 MR. FIORENZO: Okay. He's asking you if
15 you think he was being truthful when he told you what
16 you just said.

17 THE WITNESS: As I sit here today, I
18 would say, yeah. He was new.

19
20 BY MR. SEAMAN:

21 Q. What, if anything, did Mr. Hermansen
22 tell you, at that time, that Mayor Dipaola was doing
23 to prevent him from helping you to get the demolition
24 permit?

25 A. It was just, "You have these new items."

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1 Let's see what we can do and I'll try to help you."

2 Q. Did he indicate any specific action or
3 directive that Mayor Dipaola had given him with
4 regard to assisting you with the project?

5 MR. FIORENZO: Object to the form. You
6 can answer.

7 THE WITNESS: I don't remember that.

8

9 BY MR. SEAMAN:

10 Q. Looking at Paragraph 60 of the
11 complaint, it references an article in the Pascack
12 Press. Do you see that?

13 A. Yes.

14 Q. Have you read that article?

15 A. I have.

16 Q. And it references a quote from Mayor
17 Dipaola that the Borough has lost "seven of its
18 thriving businesses due to redevelopment in the name
19 of affordable housing."

20 Do you see that?

21 A. Yes.

22 Q. Did you hear Mayor Dipaola make that
23 statement?

24 A. I've heard her make that statement,
25 yeah.

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1 Q. Did you hear her make the statement
2 that's attributed to her in the Pascack Press?

3 A. Oh, no. You want to know if I knew when
4 they got that quote from her? I have no idea when
5 they got that quote. Maybe I was there. I don't
6 know.

7 Q. Okay. All right. Is it correct that
8 seven businesses within Emerson are no longer doing
9 business because of the redevelopment?

10 A. No.

11 Q. What is incorrect about that factual
12 statement?

13 A. Cork & Keg is still open down the block.
14 I have no idea about the other businesses. We paid
15 some money to one of the businesses to relocate. So
16 I don't know all the facts about each business, but I
17 can tell you that it's not true.

18 Q. Do you know if it was factually accurate
19 at the time that the statement attributed to Mayor
20 Dipaola was purportedly made, that there were seven
21 businesses that were not currently operating because
22 of the redevelopment?

23 A. That's also incorrect because there was
24 never a moment where Cork & Keg was out of business,
25 never.

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1 Q. Looking at Paragraph 62 of the
2 complaint. The final sentence in that paragraph
3 relates to "governing body members, including
4 Defendant DiPaola, are laughing, chortling, and
5 tripping over each other to be the first to 'so move'
6 and 'second' before enthusiastically adopting the
7 motion."

8 Do you see that?

9 A. Yes. And I remember it.

10 Q. Do you remember one instance or more
11 than one instance?

12 A. No. It was March 3rd.

13 MR. FIORENZO: He's referring to a
14 specific instance. You were asking about this one?

15 THE WITNESS: Yeah.

16 MR. SEAMAN: Yes, I guess I am.

17 THE WITNESS: Yeah, I remember it.

18

19 BY MR. SEAMAN:

20 Q. Did you observe Mayor Dipaola laughing
21 at that time?

22 A. Yeah.

23 Q. Do you know what she was laughing about?

24 A. I watched it on YouTube, like I do watch
25 most of their council meetings, and it was just like

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1 a funny matter about, you know, them convincing their
2 people that live in their Borough that they're going
3 to spend all this money now. They're going to go
4 after the big bad -- I forget how Mr. McCann
5 describes it -- but the big bad developer I think is
6 how he does it, to bring down this project, which is
7 their goal.

8 Q. So you heard a statement by Mr. McCann
9 during that meeting when you watched that YouTube.
10 Did you -- well, my question to you was: Did you
11 observe Mayor Dipaola laughing?

12 A. Yeah.

13 Q. Do you know what she was laughing about?

14 A. I don't remember.

15 Q. Did you observe her chortling?

16 A. Yes.

17 Q. And do you know what she was chortling
18 about?

19 A. She was laughing, chortling, and
20 whatever else we wrote in here over the fact that
21 they were coming to sue us.

22 Q. How do you know that?

23 A. It's on YouTube. You can watch it.

24 Q. Looking at Paragraph 67 of the
25 complaint, the First Amended Complaint, the final

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1 paragraph reads: "DiPaola's obstruction of the
2 project is motivated by racial ends in that it seeks
3 to stop the relocation of minority residents."

4 Do you see that?

5 A. Yeah.

6 Q. Start at the beginning and go all the
7 way to the end and tell me all of the facts that
8 you're aware of that Mayor DiPaola's obstruction of
9 the project is motivated by racial animus?

10 MR. FIORENZO: I'm going to object
11 because you've asked him about this previously today.
12 You want him to go back over his testimony? Because
13 you examined him about, you know, what Mount Laurel
14 means and how he equates that to being discriminatory
15 and what facts he knew. He's already testified at
16 some length about a lot of the facts he relies upon.
17 Do you want him to go back over all that again?

18 MR. SEAMAN: Sure.

19 MR. FIORENZO: Well, I don't think
20 that's appropriate, so if there's anything new, you
21 can -- I'm going to object because it's been asked
22 and answered in a variety of different ways.

23 MR. SEAMAN: That's an objection, but
24 it's not an objection to a deposition question.

25 MR. FIORENZO: No, it is in fact an

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1 objection to a deposition question. I just made it.

2 MR. SEAMAN: I understand. It's not an
3 objection to the form of the question.

4 MR. FIORENZO: It is. All right.

5 THE WITNESS: I have nothing new to add.

6 MR. FIORENZO: I'm going to let you do
7 it again.

8 MR. SEAMAN: All right. You know what?
9 I'll appease Mr. Fiorenzo.

10

11 BY MR. SEAMAN:

12 Q. Other than what you have told me about
13 today, start at the beginning and go all the way to
14 the end and tell me every other fact that you're
15 aware of that Mayor DiPaola's obstruction of the
16 project is motivated by racial animus?

17 A. I mentioned it already to you.

18 Q. Looking at Paragraph 69 of the First
19 Amended Complaint, it says that Mayor Dipaola -- it
20 says: "On information and belief DiPaola has used
21 her position as mayor to directly receive in the
22 approvals and permitting process with the project to
23 impede the project and slow the reaction of the
24 Borough to the project including through its
25 'resolution compliance' process."

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1 Do you see that?

2 A. Yes.

3 Q. Other than what you've told me about
4 already, are there any facts that you can identify
5 that support that position?

6 A. No.

7 MR. FIORENZO: Off the record.

8

9 (Luncheon recess: 1:05 p.m.)

10

11 BY MR. SEAMAN:

12 Q. All right. Mr. Klugmann, we're back on
13 the record. You're ready to proceed now?

14 A. I am. Thank you. I'm ready to finish.

15 Q. Okay. Again, by the way, I remarked
16 FD-1 for identification.

17 A. So I'm going to give this to you and I'm
18 going to take this one.

19 Q. So it has a proper marking on it.

20 Again, looking at Paragraph 67, which is on Page 20.

21 A. 20.

22 Q. Again, other than what you've told me
23 about previously today, are there any facts that you
24 can identify to support the proposition that Mayor
25 Dipaola intended to convey that the potential of

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1 people with racial -- with diverse racial backgrounds
2 at the project have already destroyed existing
3 businesses or would cause some sort of harm?

4 MR. FIORENZO: Objection. Asked and
5 answered.

6 MR. SEAMAN: I said other than what he
7 said here today.

8 THE WITNESS: No, not that I recall.

9
10 BY MR. SEAMAN:

11 Q. Are you familiar with the rulings that
12 Judge Padovano has issued in the state court action?

13 A. For the most part.

14 Q. Are there any rulings, as you sit here
15 today, that you're aware of, that Judge Padovano made
16 that you disagree with in terms of any of his
17 findings?

18 MR. FIORENZO: I'm going to object in
19 that it calls for a legal analysis and a legal
20 conclusion. He could only answer that if he
21 understood the legal analysis that was undertaken, so
22 I'm going to object to the form of the question.

23 MR. SEAMAN: Okay. You can still answer
24 the question.

25 THE WITNESS: Well, I love that he made

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1 Emerson write me a check for my legal fees. I love
2 the fact that Judge Carroll is in place. Is there
3 anything that I'm not happy with, any decision that
4 he made? No, not that I can think of. Judge Carroll
5 was a great decision.

6

7 BY MR. SEAMAN:

8 Q. Okay. You're satisfied with Judge
9 Carroll as far as his services as well?

10 A. Extremely. He's a nice person.

11 Q. Would you agree with me that there are
12 legitimate reasons why someone could object to a
13 development project that are not racially motivated?

14 A. Do I agree with you that people can
15 object to a project that's not racially --

16 MR. BOTTA: Why don't you have her read
17 back the question.

18 THE WITNESS: Yeah.

19 MR. BOTTA: Instead of you trying to
20 repeat it.

21 THE WITNESS: Yeah. I have to make sure
22 I understood that one.

23

24 (Whereupon, the requested portion of the
25 record was read by the reporter.)

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1

2

THE WITNESS: Hypothetically, sure.

3

4

BY MR. SEAMAN:

5

6

Q. Is it fair to say that someone could object to a redevelopment project because they believed it was too big?

7

8

MR. FIORENZO: Objection. Form.

9

Hypothetical. You can answer.

10

11

THE WITNESS: Are you talking in any case or are you talking specific to Emerson?

12

13

BY MR. SEAMAN:

14

Q. Well, in any case, first of all?

15

A. People can object to whatever they want.

16

17

Q. Have you heard anyone object to the project in Emerson, expressing their reason for their objection because they believed it was too big?

18

19

MR. FIORENZO: Objection to form. You may answer the question.

20

21

THE WITNESS: Yes.

22

23

BY MR. SEAMAN:

24

Q. Who are those people?

25

A. Mayor Dipaola.

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1 Q. Anyone aside from Mayor Dipaola who used
2 "too big" as a reason?

3 A. I don't know. I wasn't so involved
4 then, at that point, so I can't really speak to it.

5 Q. Okay. Have you heard anyone express an
6 objection to the project in Emerson on the basis that
7 it was too dense?

8 MR. FIORENZO: Objection to the form.
9 You may answer.

10 THE WITNESS: Not that I recall, other
11 than Mayor Dipaola.

12
13 BY MR. SEAMAN:

14 Q. Have you heard anyone object to the
15 Emerson project on the grounds that it required too
16 much parking?

17 A. I don't know that at all.

18 Q. Have you heard anyone object to the
19 Emerson project on the grounds that it would generate
20 too much traffic?

21 A. Yeah.

22 Q. Who are those people?

23 A. I don't remember. This is going back
24 four years ago.

25 Q. Do you recall Mayor Dipaola raising

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1 traffic as an issue?

2 A. Yeah.

3 Q. Do you recall anyone other than Mayor
4 Dipaola raising traffic as an issue?

5 A. No.

6 Q. With the other projects in your
7 portfolio that we discussed this morning --

8 A. Yes.

9 Q. -- have there been objections to those
10 projects for reasons such as being too big, too
11 dense, too much parking, too much traffic?

12 MR. FIORENZO: I'm going to object.

13 Irrelevant. Immaterial. Beyond the scope of
14 discovery. It has nothing to do with this case.
15 Subject to my objection, I'm going to let him answer
16 the question.

17 THE WITNESS: Well, I think, really,
18 it's important to answer that question because I want
19 to clarify. A lot of the stuff that I heard from
20 Mayor Dipaola, including the stuff that I said that
21 she spoke out against, was after she was mayor, was
22 after she looked at me in the face and including the
23 previous mayor, this was right before the end of the
24 year, and she told us how she wanted to create a
25 subcommittee to review the plans. And I said, "If I

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1 do it, are you going to go ahead with it? Are you
2 going to do whatever needed to be done? Are we done?
3 Are we finished? We know you don't like it. At the
4 end of the day, this is approved. The site is
5 approved and you have to approve it." And she looked
6 at me and she said, "Yes." And then, when it came
7 out to vote, she abstained. And then, from there,
8 she never really -- which is what happened -- you're
9 asking me, do people come out and dislike or speak
10 out against projects? It happens all the time. We
11 all know that.

12 But, once it's approved, you don't have
13 people, unless it's a direct neighbor, 99 percent of
14 the time, who's affected by the project. You don't
15 have people come out that keep on going on and on
16 about the project. And that's what she has done.
17 She has gone on and on about how she wants to destroy
18 the project, even after it's approved. The project
19 was approved. It was done. It's not her -- the bed
20 was made by someone else. That's it. She has to
21 deal with it and move on. She wants to stop
22 development going forward, that's up to her and her
23 council and her planning board. At the end of the
24 day, this was approved before she was mayor. And she
25 has spoken out before, after, and everything in

Page 106

1 between to do whatever she can to stop it.

2

3 BY MR. SEAMAN:

4 Q. All right. I just want to clarify the
5 time frame. You said "before the end of the year".
6 Can you testify to which year that was?

7 A. To which point?

8 Q. You spoke with her about a subcommittee,
9 it was near the end of the year?

10 A. That was 2018, I think. Yeah.

11 Q. Okay. So was that while she was still a
12 member of the council before she became mayor?

13 A. Yes.

14 Q. That's your reference? And the
15 reference to a vote was when she was a member of the
16 council before she became mayor. Is that correct?

17 A. Correct.

18 Q. Did she make any statements on the
19 record at the council as to the reason why she was
20 abstaining from her vote as opposed to voting for or
21 against the resolution?

22 A. No. But to me, it was cowardly because
23 you just made a deal with someone and looked at them
24 in the face and then the only answer she could have
25 come out to have given was yes. She didn't give that

Page 107

1 answer. So it was a coward move. You shake
2 someone's hand, you follow through on what you say.
3 And she didn't do that, which is the story here.

4 Q. Did her abstention from the vote on that
5 resolution prevent it from passing?

6 A. No.

7 Q. Who else was present during the pre-vote
8 conversation that you referred to?

9 A. I had an attorney there and I had -- I
10 don't remember if the architect was there or the
11 engineer, but I had an attorney and I believe -- I
12 don't know, maybe my brother. I don't remember. I
13 don't remember everybody that was there.

14 Q. Do you remember anyone that was there?

15 A. Sure. Lou Lamatina, who was the prior
16 mayor, the redevelopment attorney was there, Keith
17 Hoffman was there, I think that's his first name, he
18 was -- he went on with her to eventually join on the
19 council, so he was an elected official but wasn't in
20 yet. She was there. The room was packed. It was a
21 back room and there was a bunch of people there, two
22 attorneys, town attorney, the redevelopment attorney,
23 I don't know.

24 Q. I just want to understand the timeline
25 of this.

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1 A. Yeah, that's fine.

2 Q. No. You had this meeting and these
3 statements you're attributing to Mayor Dipaola at the
4 time that she was still a council member were made.
5 Did the governing body then move directly to the dais
6 in open session or was there a closed session?

7 A. This was closed session. This was
8 closed session. This wasn't done in open session.

9 Q. And were you present for the entire
10 closed session meeting?

11 A. No.

12 Q. Okay. So you were present for a portion
13 of the closed session meeting and there were
14 discussions taken during that closed session meeting
15 and then you and your colleagues were excused from
16 the closed session. Is that fair to say?

17 A. I don't remember how it ended. But we
18 definitely stepped out to have our own private
19 conversation about what we wanted to do.

20 Q. Is it your understanding that the
21 governing body continued to meet in closed session
22 for a period?

23 A. I really don't remember.

24 Q. And then subsequent to the closed
25 session, they returned to the dais?

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1 A. To vote.

2 Q. And they reopened the public meeting?

3 A. Yes.

4 Q. That was the time when the mayor cast
5 her vote as an abstention?

6 A. Of the council, yeah.

7 Q. Other than what you've told me
8 previously today, what facts can you point to that
9 show that the defendants' land use decisions in this
10 case were motivated by racial animus as opposed to a
11 mere reluctance to comply with state law?

12 MR. FIORENZO: Objection to form. You
13 may answer.

14 THE WITNESS: I don't know if I have any
15 new fact -- any new thing that I haven't brought up.
16 No. It's just, as the lawsuit says and as I've told
17 you, it's just her insistence of not having
18 affordable housing there.

19
20 MR. SEAMAN:

21 Q. Okay. Same question in terms of if
22 there are any facts other than what you've told me
23 about already today, that you're aware of that show
24 that the defendant's land use decisions were
25 motivated by racial animus as opposed to a general

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1 dislike of large residential buildings?

2 A. There was no land use decisions made
3 here. I'm not sure I understand the question.

4 Q. What facts, if any, other than what you
5 told me about today, are you aware of, that the
6 defendant's actions with regard to your development
7 were motivated by racial animus as opposed to a
8 general dislike of large residential buildings?

9 MR. FIORENZO: Objection. Asked and
10 answered now several times. Do you have something
11 else to add to what you've already told him?

12 THE WITNESS: No.

13

14 BY MR. SEAMAN:

15 Q. Has Emerson Redevelopers Urban Renewal
16 been damaged as a result of the actions of the mayor
17 and the Borough that make up this action?

18 A. I think significantly.

19 Q. Can you start at the beginning and go
20 all the way to the end and tell me all the ways that
21 the plaintiff has been damaged by those actions?

22 A. I can't tell you all --

23 MR. FIORENZO: Let me just note, he's
24 going to answer the question, but there will be
25 expert reports that will be submitted that address

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1 the particulars and the numbers and damages. He's
2 here, and you're welcome to ask him generally,
3 conceptually about it. He'll answer it to the best
4 of his abilities.

5 MR. SEAMAN: He's been doing a very good
6 job of it so far, so I'm sure he'll continue.

7 MR. FIORENZO: Okay, yeah. Thank you.

8 THE WITNESS: What was the question?

9 MR. FIORENZO: Have you suffered any
10 damages --

11 THE WITNESS: No, he was asking about
12 the Borough, I think.

13 MR. SEAMAN: I'll repeat the question,
14 just to be clear. Let's start at the beginning --

15 MR. BOTTA: You don't want to ask the
16 question, I think.

17 MR. FIORENZO: You want me to ask?

18 MR. BOTTA: No. Let the reporter read
19 it.

20 THE WITNESS: I'm happy to answer both
21 of them. That's why.

22 MR. BOTTA: That's how it should be
23 done. We don't want Joe to rephrase it for you.
24 Just have the reporter ask it again.

25 MR. FIORENZO: I'm just here to help.

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1 I'm just trying to help. I'm here to help. That's
2 all.

3 MR. SEAMAN: Oh, yeah.
4

5 (Whereupon, the requested portion of the
6 record was read by the reporter.)
7

8 MR. FIORENZO: Yeah, I just want to
9 object to the form. I don't know what start at the
10 beginning and going to the end means. But subject to
11 my objection, you can describe it as best you can.

12 THE WITNESS: I'm actually happy that I
13 asked to repeat it because I didn't hear the Urban
14 Renewal part. I only heard the Emerson part. So I
15 thought you were talking about the Borough as opposed
16 to me, but you're talking about me.
17

18 BY MR. SEAMAN:

19 Q. No, I'm asking how you've been damaged.
20 A. Yeah. So the first and foremost is the
21 delay in the project, the delay in the ability to
22 make money, to have an income from -- there's an
23 income producing property. So the fact that we
24 should have started building this within a short time
25 frame after we closed on it being that it had all the

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1 government approvals, you have taxes, insurance,
2 carry. It was so bad that when I finally got my demo
3 permits, the bank that I have in place says: "You're
4 not going to finish in the time frame of when this
5 loan is maturing. You have to redo the loan."
6 (Repeating for reporter) "You're not going to finish
7 the project by the time that the loan is going to
8 mature, even with your extension that you have in
9 place. You need to redo the loan. We're not going
10 to advance you the draws and do it; especially since
11 we know that the municipality is slow playing
12 everything." And then we also have the fact that the
13 cost of materials, construction, the higher interest
14 rates that are out there now, the lack of income that
15 was made for the management company that we have, and
16 the lack of just income that would have came in from
17 the property, the profits that could have been made
18 here are substantial. On top of that, her onslaught
19 of media press releases, postings under -- whatever
20 they do, their consistent council meetings that they
21 like to make, their -- pardon my French -- their BS
22 conversations that they make up and try to have and
23 do things, is just -- there's nothing short of
24 trying -- their indirect way of trying to destroy my
25 reputation as a developer in this state. It came up

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1 in other municipalities and you can do your homework
2 on it. It happened in Clifton. I still got my
3 approval there, but it's nothing short of stress,
4 anxiety, extra work, extra workers that have to do
5 stuff, starting over, starting again. My lack of
6 ability, even on top of all this, to go -- I'm
7 sitting here today doing a deposition when I should
8 be going ahead and looking for new work and doing
9 more projects and going to other municipalities to
10 see how I can do new work. So it's coming, the
11 hammer is coming.

12 Q. What do you mean by "the hammer is
13 coming"?

14 A. I want a lot of money; a lot of money.
15 Just on the record, we've offered her a million
16 times -- oh, I shouldn't say a million -- many times
17 to try to work out ways to settle this and her
18 misleading and misguiding attitude, I don't know if
19 that's the right way to put it, but I'll just say it
20 nicely, you know, she has no interest in settling.
21 She has no interest in doing what's right. She has
22 no interest in doing anything. And that's why we're
23 here for the -- until the finish line. And our offer
24 to settle is not because we think we're wrong. We
25 know we're 100 percent right.

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1 Q. The management company that you
2 indicated is not earning the profits, is that
3 different in any way other than Emerson Redevelopers
4 Urban Renewal?

5 A. It's called 21 Glen Management.

6 Q. And do they serve as a management
7 company for your other projects in your portfolio?

8 A. Yeah. Yeah.

9 Q. And it's your testimony that they've
10 lost money because they're not actively managing the
11 property at this point?

12 A. 1,000 percent. Yes.

13 Q. Are there any agreements in place from
14 Emerson Redevelopers Urban Renewal to pay 21 Glen
15 Management any amount of that loss?

16 A. No. They only make their money during
17 lease up and management. They only make their money
18 when we're going through the lease up and management
19 process.

20 Q. Would you agree with me that any of the
21 increased cost that you've described in terms of the
22 cost of developing this property will increase the
23 basis for the property for tax purposes?

24 MR. FIORENZO: Object to the form. I
25 don't know what you mean by "basis". It has a legal

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1 tax term. I don't know how you're using it.

2 THE WITNESS: So I don't understand the
3 question.

4

5 BY MR. SEAMAN:

6 Q. Are you familiar with the term "basis"
7 in terms of income tax implications?

8 A. For income tax -- I'm confused by the
9 question.

10 MR. FIORENZO: You're asking his opinion
11 as to whether something is going to increase the
12 basis?

13 MR. SEAMAN: I'm asking him if he's
14 familiar with the term "basis".

15 MR. FIORENZO: So you're asking him for
16 a legal conclusion. How would he know? He's not
17 here as an expert.

18 MR. SEAMAN: I'm asking him a question.
19 Let him give an answer. That's all. It will be what
20 it is.

21

22 BY MR. SEAMAN:

23 Q. Are you familiar with the term "basis"
24 in terms of use in taxation?

25 MR. FIORENZO: Object to the form.

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1 Under the federal tax code? Is that the question?

2 MR. SEAMAN: Generally, is he familiar
3 with the term?

4 THE WITNESS: Vaguely.

5

6 BY MR. SEAMAN:

7 Q. Okay. On the other properties that
8 you've developed that are within your portfolio that
9 are actively leasing to tenants currently, are you
10 aware of the use of a depreciation deduction to
11 offset the income those properties generate?

12 A. Of course.

13 Q. And are you aware of the fact that the
14 more you spend to develop the property, the greater
15 that depreciation value becomes?

16 MR. FIORENZO: Objection. Calls for a
17 legal/tax accounting conclusion. He's not here as an
18 expert. He's not qualified to give such opinions, so
19 I object to the form.

20

21 BY MR. SEAMAN:

22 Q. Generally, are you familiar with that
23 concept?

24 A. No.

25 Q. Are there any projects that Accurate

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1 Builders has lost as a result of any of the issues
2 that you're having with the Emerson project?

3 MR. FIORENZO: Object to the form. What
4 do you mean by "lost"?

5 MR. SEAMAN: Do you understand the
6 question?

7 MR. FIORENZO: I don't.

8 THE WITNESS: I can guess.

9 MR. SEAMAN: Well, I don't want you to
10 guess.

11 THE WITNESS: Then, no.

12

13 BY MR. SEAMAN:

14 Q. Okay. Are there any projects that
15 Accurate Builders has applied for to develop property
16 that have been denied because of the issues that
17 you're having with Emerson in this case?

18 A. No. But I can tell you that in my
19 Clifton case, I had to have a non-Jew represent me
20 because of Emerson, because one of the people on the
21 council in Clifton, we knew that she was going to --
22 she was friends with Mayor Dipaola and she was going
23 to reference it. And if I would be the face of it,
24 she would say, "Look what's going on in Emerson. Do
25 you want to be a part of that?"

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1 Q. So who is this member of the Clifton
2 council who's --

3 A. I don't remember her name.

4 Q. You don't recall the person?

5 A. No.

6 Q. And when you say you had to have a
7 non-Jew represent you, did you have someone appear as
8 a representative of Accurate Builders? Or are you
9 saying you had a non-Jewish attorney represent you?
10 I just want to understand what you mean be "represent
11 you"?

12 A. I had someone else under his own entity
13 go and get the approval with his own attorney.

14 Q. And who was that?

15 A. Kevin Codey, C-O-D-E-Y.

16 Q. And who was the attorney that
17 represented Mr. Codey in that?

18 A. Joe something, I forgot his last name.

19 Q. And did you have some sort of
20 discussions with Mr. Codey about him going in to get
21 that approval and then transferring the development
22 rights over to Accurate Builders?

23 A. Of course.

24 Q. And was there anything in writing to
25 memorialize that?

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1 A. Yes.

2 Q. And what was in writing to memorialize
3 that?

4 A. A contract.

5 Q. And does that contract specifically
6 reference a desire to avoid Clifton being aware of
7 the fact that it was going to be a Jewish business
8 that would be doing the development?

9 A. No.

10 MR. SEAMAN: Can I take five minutes
11 just quickly, Joe?

12 MR. FIORENZO: Sure, sure.

13

14 (Whereupon, a brief recess was taken.)

15

16 MR. SEAMAN: Mr. Klugmann, I don't have
17 any further questions of you. I thank you for your
18 time.

19 THE WITNESS: Really?

20 MR. SEAMAN: Yeah, I really don't, but I
21 appreciate your time. I appreciate your testimony.

22 THE WITNESS: You've been very nice.

23 MR. FIORENZO: Thank you, appreciate it.

24 (Whereupon, the deposition was concluded
25 at 1:49 p.m.)

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1 CERTIFICATE
2
3
4

5 I, JOMANNA DEROSA, a Certified Court
6 Reporter and Notary Public of the State of New
7 Jersey, do hereby certify that the foregoing is a
8 true and accurate transcript of the testimony as
9 taken stenographically and digitally at the time,
10 place and on the date hereinbefore set forth, to the
best of my ability.

11

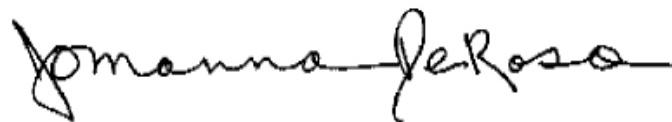
12

13 I DO FURTHER CERTIFY that I am neither a
14 relative nor employee nor attorney nor counsel of any
15 of the parties to this action, and that I am neither
16 a relative nor employee of such attorney or counsel,
17 and that I am not financially interested in the
action.

18

19

20



21

JOMANNA DEROSA, C.C.R.

22

License No. 30XI00188500

23

Notary Public of the
State of New Jersey

24

25

[& - accounting]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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